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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 584

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee,

INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

JURISDICTIONAL STATEMENT AND APPENDICES.

JAMES B. MCDONOUGH, JR.,
Counsel for Plaintiff-Appellant,
Seaboard Air Line Railroad Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

CHARLES T. ABELES,
Of Counsel.

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Jurisdictional Statement.

This is an appeal by the Seaboard Air Line Railroad Company, the plaintiff below, from a judgment of the United States District Court for the Eastern District of Virginia, dismissing the complaint in an action to enjoin and set aside an order of the Interstate Commerce Commission.

The case involves the power of the Interstate Commerce Commission to require the appellant, without its consent, to embrace in certain through routes substantially less than

the entire length of its railroad which lies between the termini of such through routes, upon the complaint of another railroad company, the intervenor Atlantic Coast Line Railroad Company.

A novel factual situation is involved, in that the Interstate Commerce Commission had in a prior proceeding authorized the abandonment of a line of railroad belonging to the intervenor Atlantic Coast Line Railroad Company, upon which is located an interchange point for traffic moving to and from the plaintiff and the intervenor Atlantic Coast Line Railroad Company over through routes and upon joint rates. The plaintiff was not a party to the abandonment proceeding, and the Atlantic Coast Line Railroad Company has never exercised the abandonment authority, now more than four years old.

The Court below found that the order of the Interstate Commerce Commission in the complaint proceeding, which is the order under attack upon this appeal, did not create any new through routes and, further, that even if it did, the Commission had met the requirements of the Interstate Commerce Act in that connection.

This Jurisdictional Statement is submitted pursuant to the Rules of this Court to show the basis of this Court's jurisdiction of the appeal and that a substantial question is presented.

Opinion Below.

The opinion of the United States District Court for the Eastern District of Virginia is not yet reported. It is dated December 10, 1954, and a copy is attached hereto as Appendix A-1. The opinion was written by Circuit Judge Armistead M. Dobie, and concurred in by District Judges Sterling Hutcheson and Walter E. Hoffman.

The order of the Interstate Commerce Commission sought to be enjoined and set aside was made in a complaint proceeding brought against the appellant by the Atlantic Coast Line Railroad Company and given Docket No. 30882. That order is dated July 30, 1954, and a copy thereof is attached hereto as Appendix A-2.

By order dated October 11, 1954, in Docket No. 30882, the Interstate Commerce Commission modified the order of July 30, 1954, with respect to its effective dates, and a copy of the order of October 11, 1954, is attached hereto as Appendix A-3.[1]

In Docket No. 30882 the first report of the Interstate Commerce Commission, by Division 3, is dated September 2, 1952, and is reported as *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company*, 286 I. C. C. 669, and a copy of that report is attached hereto as Appendix A-4.

The abandonment proceeding, to which the appellant was not a party, was given Finance Docket No. 16872. The report of the Interstate Commerce Commission in that proceeding was dated December 18, 1950. It is not printed in the Commission's reports, although it appears as *Atlantic Coast Line Railroad Company Abandonment*, 275 I. C. C. 810 (8th case), but a copy of that report (and Certificate) is attached hereto as Appendix A-5.

The appellant's petition for leave to intervene in the abandonment proceeding (Finance Docket No. 16872) was denied by order of the Interstate Commerce Commission dated February 2, 1953, and a copy of that order is attached hereto as Appendix A-6.

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[1] By order dated December 13, 1954, the Court below (such order being signed by each member of the Court) enjoined and restrained the enforcement of the order of the Interstate Commerce Commission of July 30, 1954, as amended October 11, 1954, during the pendency of this appeal.

In the complaint case, Docket No. 30882, the proceedings were reopened and there was a report of the Commission on further hearing, likewise by Division 3, dated January 11, 1954, reported as *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company,* 291 I. C. C. 329, and a copy of that report is attached hereto as Appendix A-7.

In the complaint case, Docket No. 30882, a copy of the order of the Commission, by Division 3, dated January 11, 1954, is attached hereto as Appendix A-8.

By order dated May 4, 1954, in the same case, the full Commission denied the petition of appellant for reconsideration and other relief, and a copy of that order is attached hereto as Appendix A-9.

By separate order likewise dated May 4, 1954, in the same case, the full Commission vacated the order of January 11, 1954, and entered a new order, and a copy of the new order of May 4, 1954, is attached hereto as Appendix A-10.

By order dated July 30, 1954, in the same case, the full Commission denied the further petition of appellant for rehearing and other relief, and a copy of that order is attached hereto as Appendix A-11.

By separate order likewise dated July 30, 1954, the full Commission vacated the order of May 4, 1954, and a copy of that order of July 30, 1954, is, as above stated, attached hereto as Appendix A-2.

The full text of the orders of January 11, 1954 (Appendix A-8) of May 4, 1954 (Appendix A-10), and of July 30, 1954 (Appendix A-2) is deemed to be of importance because of the variations in the language of the three orders.

Jurisdiction.

This suit was brought under 28 U. S. C. §§1336, 1398, 2284 and 2321-2325 to enjoin, set aside, annul and suspend an order of the Interstate Commerce Commission. The judgment of the District Court dismissing the complaint was dated and entered December 10, 1954. No petition for rehearing was filed. The notice of appeal was filed December 13, 1954, in the United States District Court for the Eastern District of Virginia. The statutory provision believed to confer on this Court jurisdiction of the appeal is 28 U. S. C. §1253. The following cases are believed to sustain the jurisdiction; *Thompson* v. *United States,* 343 U. S. 549; *United States* v. *Great Northern Railway Co.,* 343 U. S. 562, and *Pennsylvania R. Co.* v. *United States,* 323 U. S. 588.

Questions Presented.

The questions presented by the appeal, as set forth in the notice of appeal, are as follows:

1.

Did the District Court err in holding that the order of the Interstate Commerce Commission of July 30, 1954, as modified by the order of said Commission of October 11, 1954, did not have the effect of establishing a new through route between the points named in said order?

2.

Did the District Court err in holding that the said order of the Commission of July 30, 1954, as modified, was authorized by and in conformity with the provisions of Section 3(4) of the Interstate Commerce Act?

3.

If said order of July 30, 1954, as modified, does have the effect of establishing a new through route between the points named in said order, was said order based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act?

4.

If said order of the Interstate Commerce Commission was based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act, were such findings supported by substantial evidence?

5.

Did the District Court err in finding that if the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 be exercised, an interchange point other than Thalmann would be necessary for the traffic here involved?

6.

Did the District Court err in finding that the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 was and is valid?

Statutes Involved.

Sections 3(4), 15(3) and 15(4) of the Interstate Commerce Act, as amended (49 U. S. C. §§ 3(4), 15(3) and 15(4)) which are set forth in Appendix B hereto.

Statement.

The facts material to the consideration of the questions presented cannot be readily understood without reference to a map. There is attached hereto marked Appendix C an

outline map showing the principal points, places, and lines of railroad involved in this action.

The appellant, hereinafter called the Seaboard, and the Intervenor, Atlantic Coast Line Railroad Company, hereinafter called the Coast Line, both have extensive trackage in the Florida peninsula. The Coast Line has its single line route to and from points in the Florida peninsula through Jacksonville to and from Atlanta and Birmingham.

The rail traffic involved in this proceeding is traffic originating and terminating on the Seaboard that moves to and from points in Florida south of Jacksonville, and the Atlanta and Birmingham gateways, and beyond. Such Seaboard traffic moves to and from points in the Florida peninsula through Baldwin, and does not go into Jacksonville.

The Seaboard has three principal routes for the traffic in question which, in reaching Atlanta and Birmingham, are the following:

To and from Birmingham

1. Baldwin—Tallahassee—Montgomery—Birmingham (moving between Montgomery and Birmingham over the Louisville and Nashville Railroad Company).

2. Baldwin—Tallahassee—Columbus—Birmingham (moving between Columbus and Birmingham over the Central of Georgia Railway Company).

To and from Atlanta

1. Baldwin—Savannah—Vidalia—Macon—Atlanta (moving between Vidalia and Macon over the Macon, Dublin and Savannah Railroad Company, and between Macon and Atlanta over either the Central of Georgia Railway Company or the Southern Railway Company).

The Seaboard owns all of the capital stock of the Macon, Dublin and Savannah Railroad Company, which owns the

line of railroad between Vidalia and Macon. That Company has outstanding in the hands of the public $1,253,000, principal amount of First Mortgage 5% Bonds, which are not guaranteed by the Seaboard as to either principal or interest. The Macon, Dublin and Savannah Railroad Company is, however, an "intermediate railroad operated in conjunction and under a common management or control" with the Seaboard, within the meaning of Section 15(4) of the Interstate Commerce Act.

The line of the Coast Line extending from Brunswick, through Anguilla, Thalmann, Alma and Sessoms to Atlanta and Birmingham was formerly the Atlanta, Birmingham & Coast Railroad Company, and prior to that it was the Atlanta, Birmingham & Atlantic Railway Company. Early in this century (the testimony was about 1905) when that line of railroad did not reach Jacksonville, and when it was not owned or controlled by the Coast Line, the Seaboard entered into through routes and joint rates with that company for the movement of traffic to and from the Florida peninsula and the Atlanta and Birmingham gateways, and beyond, with interchange at Thalmann.

The Coast Line acquired control of the AB&C on January 1, 1927, and took title to its properties effective January 1, 1946. (*Reorganization of the A. B. & A. Ry.*, 117 I. C. C. 181 (October 26, 1926), and 117 I. C. C. 439 (December 21, 1926), and *Atlantic Coast Line R. Co., et al. Purchase,* 261 I. C. C. 820 (December 12, 1945)).

The Seaboard heretofore entered into similar through routes and joint rates with the Southern Railway Company (hereinafter called the Southern), with interchange at Everett, for the traffic in question (i. e., to and from points in Florida south of Jacksonville and the Atlanta and Birmingham gateways and beyond), and such through routes and joint rates are presently in effect with the Southern, via Everett.

For the traffic in question, the Seaboard does not have, and has never had, through routes and joint rates with either the Coast Line or the Southern, via Jacksonville.

The route via the Coast Line through Thalmann did not attract a large volume of the traffic in question. During the year 1952, for example, only 1,743 cars moved through Thalmann in conjunction with the Coast Line, while 73,662 cars moved through the Montgomery, Columbus and Vidalia (Macon) gateways, over the Seaboard's longer single line routes upon which it retained its long haul and greater revenue, in conjunction with the Central of Georgia Railway Company and the Louisville and Nashville Railroad Company and, to some extent, over the Southern between Macon and Atlanta.

The Coast Line applied to the Commission for, and secured, authority to abandon the portion of the old AB&C between Anguilla and Alma, the report of the Commission being dated December 18, 1950 (Appendix A-5). That authority has never been exercised.

The Seaboard expressed a willingness to join with the Coast Line in through routes and joint rates for the traffic in question, with interchange at Bladen, if and when the Coast Line should exercise that abandonment authority. There are no facilities at Bladen for such interchange, but such facilities could be constructed at moderate expense.

The Coast Line declined to accept Bladen, and demanded that the through routes and joint rates in effect through Thalmann should be put in effect through Jacksonville, and offered to allow the Seaboard the Thalmann divisions on such traffic when interchanged at Jacksonville. The Seaboard declined. The Seaboard's revenue on traffic moving through its principal gateways of Montgomery, Columbus and Vidalia (Macon) is greater than its revenue

on traffic moving through Thalmann (or through Jacksonville, on the Coast Line's suggested basis).

The Coast Line, instead of exercising its abandonment authority, filed a formal complaint with the Commission (Docket No. 30882) and the Commission has now ordered the Seaboard to make provisions for the interchange at Jacksonville of all of the traffic in question at the joint rates and divisions presently in effect via Thalmann.

The "traffic in question" is not the comparatively few cars that heretofore moved through Thalmann. On the contrary it is all of the traffic moving to and from Seaboard stations in Florida and the Atlanta and Birmingham gateways and beyond. If the Commission's order of July 30, 1954, is allowed to stand, the Coast Line will be in a position to take Seaboard originated traffic at Jacksonville but the Seaboard will have no corresponding privilege of soliciting Coast Line originated traffic at Jacksonville. The same preference to the Coast Line will exist with respect to southbound movements.

The Commission seemed to think, at one point, that it could limit the volume of that traffic that might move through Jacksonville to the volume that heretofore moved through Thalmann. The order of January 11, 1954 (Appendix A-8) would have required the Seaboard to join with the Coast Line in establishing and maintaining:

> "* * * provisions for the interchange at Jacksonville, Fla., of traffic between points on the lines of the defendant south of Jacksonville, on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., * * *."

The corresponding provisions of the order of May 4, 1954 (Appendix A-10) with the added words in italics, read as follows:

> "* * * provisions for the interchange at Jacksonville, Fla., of *all* traffic, *now interchanged at Thalmann, Ga.,* between points *in Florida* on the lines of the defendant south of Jacksonville, *Fla.,* on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga. and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga.,* * *."

The order of July 30, 1954 (Appendix A-2) eliminated the words "now interchanged at Thalmann, Ga.," and inserted the words shown in italics in the corresponding provisions of that order, as follows:

> "* * * provisions for the interchange at Jacksonville, Fla., of all traffic between points in Florida on the lines of the defendant south of Jacksonville, Fla., *from and to which joint rates are presently in effect via Thalmann, Ga.,* on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., * * *."

The Commission erroneously assumed that the mere grant of the abandonment authority to the Coast Line made it necessary to have a new point of interchange and so stated in its report of January 11, 1954.[2] There was no

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[2] Appendix A-7, p. 2; "As stated in the prior report, the necessity for the establishment of a new interchange point for the traffic handled jointly by the Coast Line and the Seaboard between Seaboard stations south of Jacksonville and points north and west of Waycross arises from authority granted by the Commission in

such necessity for two reasons. The first is that the Coast Line has not yet exercised the abandonment authority (if still valid) and the routes through Thalmann are open today. The second is that even if the abandonment authority was exercised and the routes through Thalmann were closed, there is no public interest or shipper necessity in maintaining routes through Thalmann. The traffic in question, which is Seaboard originated or terminated traffic, can move equally as well, or better, over the Seaboard's own single line routes.

The Commission itself, in the very report of January 11, 1954 (Appendix A-7) found that the Seaboard's own single line routes were "presumably" satisfactory for the handling of perishable traffic and if satisfactory for that traffic we may also assume (as the Seaboard witnesses testified) that they are satisfactory for all other traffic, saying (page 24, post):

> "In addition to traffic over the Macon, Dublin & Savannah route via Savannah and Vidalia, the Seaboard now handles traffic to Atlanta, Birmingham, and beyond over routes through Everett, Ga., Savannah, Columbus and Montgomery. To Atlanta and Birmingham those routes are somewhat longer than the Seaboard-Coast Line route through either Jacksonville or Thalmann, but while the time in transit is not shown, they presumably are satisfactory for the handling of perishable traffic, since the Thalmann route has not attracted a large amount of Seaboard traffic."

The Seaboard's single line routes through Montgomery and Columbus for the traffic in question are actually not

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Finance Docket No. 16872, unreported, but indexed at 275 I. C. C. 810, for the abandonment by the Coast Line of a portion of its line of track between Brunswick, Ga., and Sessoms, Ga., on which the present interchange point, Thalmann, is located."

"somewhat longer" than the Coast Line's routes. Under the exception of Section 15(4)(a) of the Interstate Commerce Act[3] it would be necessary for the Commission, in opening new routes through Jacksonville, to find that the Seaboard's routes through Montgomery, Columbus, and Vidalia (Macon) were unreasonably long.

The fact is, however, that there is no direct testimony in the very full record before the Commission giving the relative mileages of the Seaboard and Coast Line routes. There are a number of maps in the record from which the comparative distances could be scaled, which will show that those Seaboard routes are not unreasonably long. Under those circumstances we feel it proper to state that, in fact, the Seaboard's routes through Montgomery and Columbus to Birmingham are actually shorter than the comparable Coast Line route and that the Seaboard's route through Vidalia (Macon) to Atlanta is only slightly longer than the Coast Line's route.

The Commission attempted to make the finding required by Section 15(4)(a) by finding that a route to Atlanta and Birmingham over the Seaboard's own rails through Hamlet, North Carolina (shown on Appendix C) would be unreasonably long.[4] There is, of course, no evidence that any of the

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[3] "• • • (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable route which could otherwise be established, • • •."

[4] Appendix A-7, p. 27; "It is significant that the defendant maintains through routes with numerous other carriers, through various junctions, which embrace substantially less than the entire line of the defendant's railroad between south Florida and Atlanta and Birmingham. It reaches Atlanta and Birmingham with its own rails, but there is no indication that its much longer single-line route through North Carolina moves any of the traffic thereto from Florida.

"By Section 15(4) we are forbidden to require any carrier, without its consent, to embrace in a through route substantially less than the entire length of its line between the termini of such

traffic in question moves to Atlanta and Birmingham over the Seaboard's own rails through Hamlet, and the Commission made no finding that the Seaboard's routes through Montgomery, Columbus and Vidalia (Macon) were unreasonably long.

The Commission's report of January 11, 1954 (Appendix A-7) likewise wholly fails to meet the requirements of Section 15(4)(b) of the Interstate Commerce Act,[5] and to the extent that its findings may purport to do so, they cannot be supported by the record.

The Coast Line produced only two shipper witnesses, in the hearings before the Commission. Those two witnesses were produced at a hearing on January 15, 1952, and no other shipper witnesses were produced at the further hearings, held on March 12, 13, 23, 24 and 25, 1953.

One of the shipper witnesses produced by the Coast Line was the traffic manager of the Dr. P. Phillips Company Cooperative, of Orlando, Florida. He did not testify that the Seaboard service was unsatisfactory, but said he wanted to continue to give the Coast Line business (Tr. 56).

The other shipper witness was the general traffic manager of the International Mineral and Chemical Corporation. He did not testify that the Seaboard service was unsatisfactory. His testimony was that he wanted a route with the Coast Line continued in order to carry out his company's "policy of distribution of tonnage" (Tr. 59).

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through route, unless the carrier's own line is unreasonably long or the route proposed is needed in order to provide adequate, and more efficient or more economic, service. The defendant does not attempt to show that its own line between south Florida and Atlanta and Birmingham would not be unreasonably long as compared with the Seaboard-Coast Line route. We find that it would be unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville."

[5] "• • • (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic transportation • • •."

The Questions Presented Are Substantial.

We believe that the Court below has misconstrued and misapplied the decision of this Court in *Thompson* v. *United States*, 343 U. S. 549 (June 2, 1952). The Court below cited and quoted from that case as authority for the proposition that the existence of a through route was determined by the holding out by the carriers involved and the actual transportation of traffic at a through rate from and to the same origin and destination points.

The evidence showed, for example, shipments of canned goods moving via Thalmann from Lake Wales, Florida, to St. Louis, Missouri. The Court below said (Appendix A-1, p. 9), "The through route is already in effect via Thalmann and all that is being done is to establish a new point of interchange in lieu of Thalmann." The Court below made no mention of the fact that through routes for those shipments were also in effect through Montgomery, or Columbus, or Vidalia (Macon).

If the test adopted by the Court below was in fact the test of the existence of a through route the Commission's powers to require the establishment of new through routes at joint rates would be enormously broadened, in fact, the Commission's powers in that respect would be practically without limit. We think it unnecessary to elaborate upon the importance of correcting that erroneous determination of the test of the existence of a through route.

If we are incorrect in our construction of the *Thompson* case, the fact remains, apart from that case, that the route of movement determines the existence of the through route, not the fact that there are physical connections and the possibility of movement over many different and alternate lines.[6] The Seaboard and the Coast Line

[6] The Commission itself has long so recognized, and this Court also. Cf. *Beaman Elevator Co.* v. *Chicago & North Western Ry. Co.*, 155 I. C. C. 313 (May 7, 1929). *St. Louis S. W. R. Co.* v. *United States*, 245 U. S. 136 (November 12, 1917).

have *never* held themselves out as offering through service at joint rates *via Jacksonville,* for the traffic in question. We respectfully submit that the test of the existence of a through route, adopted by the Court below in finding the existence of such a route *via* Jacksonville, is contrary to the decision of this Court in *United States* v. *Missouri Pac. R. Co.,* 278 U. S. 269 (January 2, 1929), and every applicable or relevant decision of this Court since that date.

The case also presents the novel question as to the extent, if any, to which the Commission's power to authorize abandonments, enlarges its powers under Sections 15(3) and 15(4). That question is implicit in the reports of the Commission, in the opinion of the Court below, and is fairly comprehended within the questions presented as above set forth. If the Commission's power to authorize the abandonment authorizes it to require the continuance of existing through routes and joint rates by prescribing an alternate interchange point, without regard to the requirements and limitations of Section 15(4), it would appear that the Seaboard should have been a party to the abandonment proceeding and, in fact, was a necessary party, and that the present abandonment authority is invalid for that reason.

With respect to Section 3(4) of the Interstate Commerce Act[7] there is no showing that the Seaboard is not providing "all reasonable, proper and equal facilities for the interchange" at Jacksonville of the traffic in question, provided only that it move on combination rates, and there is no basis for a requirement that the Seaboard do something it is already doing. What the Coast Line wants is not merely interchange facilities at Jacksonville but joint rates

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[7] "All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines, * * *."

through Jacksonville, but the providing of interchange facilities does not carry with it the requirement of establishing joint rates, and Section 3(4) will not support the latter requirement of the Commission's order. The Commission has found (Appendix A-7, p. 19):

> "There is at the present time a substantial amount of traffic interchanged by the parties at Jacksonville."

The traffic to which the Commission there referred was not the traffic in question, but there is no finding that the facilities afforded at Jacksonville for the interchange of the traffic in question are inadequate. On the contrary, the Commission found (Appendix A-7, p. 19):

> "The evidence warrants the conclusion that additional interchange facilities at Jacksonville would not be required to handle the amount of additional traffic which would flow through Jacksonville if the interchange for the traffic in issue were shifted from Thalmann to Jacksonville."

Any claim by the Coast Line that it will be prejudiced by the continued existence of routes with the Southern via Everett, under Section 3(4) or any other provision of the Act, should be answered, without more, by the fact that it is the Coast Line, not the Seaboard, that is proposing to close the present routes through Thalmann, and that the continuance of routes for the Coast Line to handle Seaboard originated and terminated traffic is unnecessary and of no economic interest to anyone except the Coast Line.

Assuming (a) that the effect of the Commission's order of July 30, 1954 (Appendix A-2) was to open a new through route, and (b) that the Commission's authority to authorize abandonments does not enlarge its powers under Sections 15(3) and 15(4), and (c) that Section 3(4) does not apply to support the Commission's order, the case presents sub-

stantial questions with respect to the Commission's power under Section 15(4).

The failure to meet the requirements of either clause (a) or clause (b) of Section 15(4) is pointed out above. The Court below (Appendix A-1, p. 11) found that the Commission's finding under clause (a) could be supported by "a glance at the maps showing these lines" wholly overlooking the fact that the short-haul prohibition of Section 15(4) applies to those portions of the Seaboard's railroad which lie "between the termini of such proposed route" and that it has no application to lines of the Seaboard running off in other directions and which do not lie between the termini of such proposed through route.

The failure to meet the requirements of Section 15(4)(b) of the Act is necessarily recognized (although not given effect) by the finding in the opinion of the Court below (Appendix A-1, p. 12) that:

> "Coast Line, in its brief, frankly admits that the shippers who testified before the Commission 'were not particularly concerned with the point of interchange' but that they 'urged the retention of through interline service between Seaboard and Coast Line comparable with the existing service.' The instant case, however, involves no shipper complaints; rather is it an operational dispute between two competing carriers. And, rather clearly, we think, the operational evidence here supports the Commission's findings as to the way the public interest points."

The public interest which Section 15(4)(b) is intended to serve cannot be founded upon "an operational dispute between two competing carriers," nor based upon "operational evidence." Cf. *Pennsylvania R. Co.* v. *United States*, 323 U. S. 588 (January 29, 1945).

To say that a dispute between two railroads, in which no shippers showed any real interest, in which the Commission itself has found that the Seaboard's long haul routes were "presumably" satisfactory, and in which no other public interest appears, will justify the findings required by clause (b) of Section 15(4) is to go far beyond the decision of this Court in *Pennsylvania R. Co.* v. *United States,* 323 U. S. 588 (January 29, 1945), and in practical effect would amount to a repeal of the short-haul prohibition.

We respectfully submit that the questions presented by this appeal are substantial and that they are of public importance.

February 9, 1955.

Respectfully submitted,

James B. McDonough, Jr.,
Counsel for Plaintiff-Appellant,
Seaboard Air Line Railroad
Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

Charles T. Abeles,
Of Counsel.

Appendix A-1

DISTRICT COURT OF THE UNITED STATES,

FOR THE EASTERN DISTRICT OF VIRGINIA.

CIVIL ACTION No. 1847.

SEABOARD AIR LINE RAILROAD COMPANY,
Plaintiff,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Defendants.

(Argued November 29, 1954 Decided

Before DOBIE, Circuit Judge, and HUTCHESON and HOFFMAN, District Judges.

JAMES B. MCDONOUGH, JR., (W. R. C. COCKE and CHARLES T. ABELES on brief) for Plaintiff; WILLARD R. MEMLER, United States Department of Justice, EDWARD M. REIDY, General Counsel, Interstate Commerce Commission, for Defendants; and RICHARD B. GWATHMEY for Intervenor, Atlantic Coast Line Railroad Company.

DOBIE, Circuit Judge:

By this civil action, instituted in the United States District Court for the Eastern District of Virginia, Seaboard Air Line Railroad Company (hereinafter referred to as Seaboard), as plaintiff, sought a temporary and permanent injunction to restrain the enforcement of an order of the Interstate Commerce Commission (hereinafter called

the Commission), dated July 30, 1954, issued in Docket No. 30882, Atlantic Coast Line Railroad Company (hereinafter called Coast Line) *v.* Seaboard.

By the terms of the order of July 30, 1954, as amended by order of October 11, 1954, Seaboard is required to join with Coast Line on or before January 15, 1955, in the establishment and maintenance of an interchange at Jacksonville, Florida, upon all traffic between points in Florida, on the lines of Seaboard South of Jacksonville, Florida, from and to which joint rates are presently in effect via Thalmann, Georgia, on the one hand, and points on the lines of Coast Line from Waycross, Georgia, to Atlanta, Georgia, and Birmingham, Alabama, and points on other lines North and West of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Georgia, or such rates and divisions as may hereafter be lawfully established.

Both Seaboard and Coast Line have extensive trackage in the Florida peninsula. Both handle traffic moving to and from points in Florida South of Jacksonville and the Atlanta and Birmingham gateways and beyond. The traffic with which we are here concerned is only freight traffic originated or terminated in Florida by Seaboard. The principal gateways through which Seaboard moves freight traffic to and from points in Florida and the Atlanta and Birmingham gateways and beyond are Montgomery, Alabama, Vidalia, Georgia, and Columbus, Georgia. Seaboard does not interchange this traffic with Coast Line at Montgomery, Vidalia or Columbus.

The present interchange point for the traffic here involved, Thalmann, lies on a portion of the line of the predecessor of Coast Line, Atlanta, Birmingham & Coast Railroad which may be abandoned under authority granted in Atlantic Coast Line R. Co. Abandonment, Finance Docket No. 16872, decided December 18, 1950, 275 I. C. C. 810. Seaboard filed a petition to intervene in that proceeding which was denied. Coast Line's authority to abandon here is still valid. If this authority be exercised, an interchange point other than Thalmann would be necessary for the

traffic here involved. Seaboard made an offer to Coast Line of Bladen, Georgia, as a proper exchange point, but Coast Line declined this offer. After weighing all possible advantages and disadvantages which might accrue at the various points, the Commission concluded that the service which could be afforded the traffic involved over new interchange facilities at Bladen would be less adequate, less efficient and less economic than that which could be furnished over existing interchange facilities at Jacksonville.

In substance, the questions presented to us are:

(1) Did the Commission's order of July 30, 1954, have the effect of establishing a new through route between the points named in the order?

(2) If the order of July 30, 1954, does have that effect, was it based upon adequate findings, which in turn, were supported by substantial evidence? These issues involve interpretation of the provisions of section 3 (4) and section 15 (3) and (4) of the Interstate Commerce Act (hereinafter called the Act).

We quote these provisions of the Act:

"SECTION 3 (4). All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph, the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

SECTION 15 (3). The Commission may, and it shall whenever deemed by it to be necessary or desirable in

the public interest, after full hearing upon complaint or upon its own initiative, without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest without regard to the provisions of paragraph (4) of this section.

Section 15 (4). In establishing any such through route the Commission shall not (except as provided in section 3), and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed

in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

Counsel for Seaboard, in oral argument before us, have freely admitted that if the amount of traffic now handled by it over its lines to the Northwest would remain as it now is, the substitution of Jacksonville for Thalmann as the interchange point for traffic over Seaboard and Coast Line, would be of little practical consequence. What Seaboard fears is that a large amount of this traffic over its lines to the Northwest from Florida would, by the substitution of Jacksonville for Thalmann as the exchange point, be diverted to Coast Line. The realization of this fear would unquestionably be economically detrimental to Seaboard and correspondingly advantageous to Coast Line.

The Commission is, of course, a group of highly skilled, technical experts, primarily charged with the enforcement of the Act. A strong presumption, therefore, exists in favor of the correctness of its decisions in its limited field. A heavy burden, accordingly, rests on a litigant that asks a court to enjoin the enforcement of an order of the Commission. The approach and viewpoint of the courts in cases

such as the instant case before us have been clearly manifested in a long line of judicial decisions. Said Mr. Justice Cardozo, in Mississippi Valley Barge Line Co. *v.* United States, 292 U. S. 282, 286-287, 54 S. Ct. 692, 694, 78 L. Ed. 1260:

> "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body. In this instance the care and patience with which the Commission fulfilled its appointed task are plain, even to the casual reader, upon the face of its report."

We think the second sentence of this quotation is peculiarly applicable to the instant case.

See, also, Interstate Commerce Commission *v.* Parker, 326 U. S. 60; Badgett *v.* United States, 123 F. Supp. 62; Norfolk Southern Bus Corporation *v.* United States, 96 F. Supp. 756.

Another classical statement of the scope of judicial review accorded Commission orders is found in Interstate Commerce Commission *v.* Union Pacific Railroad Co., 222 U. S. 541, 547-548, wherein Mr. Justice Lamar stated:

> "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' Ill. Cent. *v.* I. C. C., 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

See, also, Rochester Telephone Corporation *v.* United States, 307 U. S. 125, 139-148; Riss & Company *v.* United States, 100 F. Supp. 468, affirmed, 342 U. S. 937.

Coming to the first of the questions raised in this case, we cannot overturn the finding of the Commission that the order of July 30, 1954, did not create a new "through route" as that term is used in the Act. The statutory term "through route" used throughout the Act has been thus defined by the Supreme Court in Thompson *v.* U. S., 343 U. S. 549, 556:

> "A 'through route' is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a 'through rate.' This 'through rate' is not necessarily a 'joint rate.' It may be merely an aggregation of separate rates fixed independently by the several carriers forming the 'through route'; as where the 'through rate' is 'the sum of the locals' on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. *Through Routes and Through Rates,* 12 I. C. C. 163, 166."

The Court then quoted from the Commission's summarization of its decision in *Through Routes and Through Rates, supra,* as stated in its 21st. Annual Report to Congress:

> "A through route is a continuous line of railway formed by an arrangement, express or implied, between connecting carriers * * * Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments."

Following this, the Court gave its version of the test of the existence of a through route as being "whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service." In other words, it is the through service offered by the carriers which is emphasized. In the instant case, through transportation service between Coast Line and Seaboard has been in existence for a number of years between the points involved in the Commission's order, via Thalmann. The joint rate established by the Commission in its order affects the same service between the same origin and destination points on those carriers' lines. It seems clear, in keeping with the definition of a through route cited in the Thompson case, *supra*, i. e., "A continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another," that no new "through route" has been established. The essential features of the old through route still prevail. There has been a change only in a minor detail, namely, the substitution of Jacksonville as the interchange point in place of Thalmann. Jacksonville had been utilized as an interchange point for other traffic between the same carriers for many years.

The situation before us is distinguishable from that which arose in the Thompson case, *supra*. There, the Supreme Court ruled a through route was not in existence over the lines of the Missouri Pacific and the Burlington to the ultimate destination, Omaha, Nebraska, because the Missouri Pacific offered through service with the Burlington only via Concordia, Kansas, to Lenora, Kansas, and points short of Omaha, and there was no evidence that any shipment had ever been made from Lenora to Omaha via the Burlington line, or that the carriers had ever offered through service over that route. In our case it has been the accepted practice of the Coast Line and Seaboard to perform through service from the origin to destination points described in the Commission's order.

In essence, the requisite and vitally important components of the original through route under the new arrange-

ment will still be intact—the holding out by the carriers involved and the actual transportation of traffic at a through rate from and to the same origin and destination points described in the Commission's order. Thus, the origin and destination territories and the freight rates and divisions remain the same regardless of the junction at which the traffic is to be interchanged. It is a familiar maxim that the law does not require a vain or useless thing.

Technically, what is involved here is not the establishment of a new "through route" in the statutory sense. The through route is already in effect via Thalmann, and all that is being done is to establish a new point of interchange in lieu of Thalmann. The only change in that through route occurs in the segment of the route between Baldwin, Florida, and Sessoms, Georgia. Instead of being handled as at present by Seaboard to Thalmann, thence Coast Line to Sessoms, the Northbound traffic would be handled by Seaboard to Jacksonville, thence Coast Line to Sessoms, and instead of being handled by the Coast Line from Sessoms to Thalmann, the Southbound traffic would be handled by Coast Line from Sessoms to Jacksonville, and thence Seaboard. In short, the new arrangement provides practically for the movement over a single side of a rather short triangle, instead of, as before, over two sides of this triangle. The traffic involved is through overhead traffic and would not be affected by the shift of the interchange point. No intermediate traffic would be affected. No change would be made in the participating carriers. No change would be made in the existing divisions. There would be no change in the joint through rates now applicable on the traffic via Thalmann. The matter involved is simply a readjustment of the interchange facilities for the continued operation of an established joint interline service between Coast Line and Seaboard.

If the position of the Commission be sound, that its order did not establish a new "through route", then section 15(4) of the Act would have no application, and the necessity of making findings by the Commission appropriate to clauses (a) and (b) thereof would be eliminated. *United States* v. *Great Northern R. Co.*, 343 U. S. 562, 575.

If, however, we assume that the Commission's order does establish a new "through route" under the Act (though, as has been indicated, we think otherwise) the order can be sustained on the ground that the Commission made findings, based on substantial evidence, which permit the establishment of a new "through route" under clauses (a) and (b) of Section 15(4) of the Act.

From the Report of the Commission on Further Hearing, Division 3, we quote:

> "By section 15(4) we are forbidden to require any carrier, without its consent, to embrace in a through route substantially less than the entire length of its line between the termini of such through route, unless the carrier's own line is unreasonably long or the route proposed is needed in order to provide adequate, and more efficient or more economic service. The defendant does not attempt to show that its own line between south Florida and Atlanta and Birmingham would not be unreasonably long as compared with the Seaboard-Coast Line route. We find that it would be unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville.
>
> It is clear that the Seaboard-Coast Line route through Jacksonville would be substantially superior to routes presently in use. In the prior report, the division found, at page 676:
>
> > We think, also, that the circumstances here present may reasonably be considered as falling within exception (b) of section 15(4), since the proposed route through Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation.
>
> That finding is fully warranted by the evidence, and it is affirmed. We further find that the route through Jacksonville is necessary and desirable in the public interest.
>
> Moreover there is here involved not merely a choice between routes embracing long portions of the Sea-

board's line and another route embracing substantially less of that carrier's line, but also competition between the Coast Line's route and numerous other routes embracing lines connecting with the Seaboard, all of which embrace substantially less than the long portions of the Seaboard's line embraced in other established routes. The defendant is obligated, under section 3(4) of the act, to provide reasonable and proper facilities for the interchange of traffic at an interchange point in lieu of Thalmann, with due regard for the public interest. The record is convincing that the obligation thus placed upon the carriers affected can be met only by using Jacksonville as the interchange point on the traffic described.

We conclude that interchange of the traffic described between the complainant and the defendant at Jacksonville is required to afford reasonable and proper facilities for the interchange of such traffic, in the public interest, and that provision should be made therefor at the joint rates and divisions presently in effect via Thalmann, or as such rates or divisions may be lawfully modified."

It will thus be seen that the Commission has found grounds for its order (even if it be conceded that the order establishes a new "through route") under both (a) and (b) of Section 15(4) of the Act. And either (a) *or* (b) is sufficient.

As to the Commission's finding under (a) above, the most convincing evidence, though there was other testimony, as to the comparative lengths of Seaboard's lines to and from Florida and Atlanta and Birmingham and the Seaboard-Coast Line's lines, with interchange at Jacksonville, is a glance at the maps showing these lines.

And we cannot say that the finding under (b) (above) that "the route through Jacksonville is necessary and desirable in the public interest," lacks the support of substantial evidence in the record. Though the Commission found "There is no convincing evidence that a shifting of the interchange point from Thalmann to Jacksonville

would materially change the competitive picture", Seaboard's clearly expressed fears of the result of this new interchange point contain at least an implication that the change of interchange points would be in the public interest and would afford more efficient transportation. The mere fact that an order of the Commission adversely affects the economic interest of a carrier is, of course, no ground for denying the validity of the order.

There was evidence that for many reasons Jacksonville rather than Thalmann was the most logical and reasonable interchange point for the traffic in question, and that the substitution of Jacksonville for Thalmann would not only protect existing schedules but would further serve to improve these schedules, particularly as to perishable goods. Evidence indicated, too, that the present facilities at Jacksonville are adequate to handle the interchange there of traffic between Seaboard and Coast Line and would provide the most efficient and economical service.

Coast Line, in its brief, frankly admits that the shippers who testified before the Commission "were not particularly concerned with the point of interchange" but that they "urged the retention of through interline service between Seaboard and Coast Line comparable with the existing service." The instant case, however, involves no shipper complaints; rather is it an operational dispute between two competing carriers. And, rather clearly we think, the operational evidence here supports the Commission's findings as to the way the public interest points. There was, for example, evidence that the nature of the terrain and the building conformation permitted higher speeds on the Jacksonville line than on either the Brunswick or the Sessoms line. And, again, the information gleaned from an inspection of the railroad maps submitted to us is of real importance.

For the reasons stated, we must deny the prayer of Seaboard for a temporary or permanent injunction against the enforcement of the order of the Commission. The instant civil action of Seaboard must, accordingly, be dismissed.

Action dismissed.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

SEABOARD AIR LINE RAILROAD COMPANY, Plaintiff, *v.* UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.	Civil Action No. 1847.

JUDGMENT

Upon consideration of the briefs and argument of counsel herein, it appearing to the Court that the complaint is without merit, it is

ORDERED that this action be and the same is hereby dismissed at the cost of the plaintiff.

(s) ARMISTEAD M. DOBIE
United States Circuit Judge

(s) STERLING HUTCHESON
United States District Judge

Norfolk, Virginia
December 10, 1954

(s) WALTER E. HOFFMAN
United States District Judge

Amended Order.

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 30th day of July, A. D., 1954.

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

It appearing, That on September 2, 1952, the Commission, division 3, made and filed its report in the above-entitled proceeding and by order dated February 11, 1953, reopened the proceeding for further hearing:

It further appearing, That a further hearing has been held, that full consideration of the matters and things involved herein has been had, and that the division on January 11, 1954, made its report on further hearing and entered its order therein and that said order was vacated by order of the Commission dated May 4, 1954, which report and order and the prior report herein are hereby referred to and made a part hereof:

It is ordered, That the said order of May 4, 1954, be, and it is hereby, vacated and set aside.

It is further ordered, That the above-named defendant be, and it is hereby, notified and required to join the complainant in the establishment, on or before November 15, 1954, upon not less than 30 days notice to this Commission and to the general public by filing and posting in the man-

ner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain, provisions for the interchange at Jacksonville, Fla., of all traffic between points in Florida on the lines of the defendant south of Jacksonville, Fla., from and to which joint rates are presently in effect via Thalmann, Ga., on the one hand, and points of the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., or such rates and divisions as may hereafter be lawfully established.

And it is further ordered, That this order shall continue in full force until the further order of the Commission.

By the Commission.

GEORGE W. LAIRD,
Secretary.

(SEAL)

Appendix A-3

INTERSTATE COMMERCE COMMISSION

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

IN THE MATTER OF REQUEST FOR POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER.

Present: RICHARD F. MITCHELL, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon further consideration of the record in the above-entitled proceeding and upon consideration of the written request of counsel for defendant, to avoid a hearing on an application for a temporary restraining order set before United States District Judge Walter E. Hoffman on October 13, 1954, for postponement of the effective date of the Commission's order of July 30, 1954, to afford time for the Court, in which a suit to set aside the order involved in this proceeding has been filed, to consider the validity of the Commission's order.

It is ordered, That the order entered in said proceeding on July 30, 1954, requiring the carriers to take certain action on or before November 15, 1954, on 30 days' notice, be, and it is hereby, modified to become effective January 15, 1955, with the same requirements as to notice.

Dated at Washington, D. C., this 11th day of October, A. D. 1954.

By the Commission, Chairman Mitchell.

GEORGE W. LAIRD,
Secretary.

(SEAL)

INTERSTATE COMMERCE COMMISSION

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIRLINE RAILROAD COMPANY

Submitted May 28, 1952. *Decided September 2, 1952.*

Point of interchange prescribed for all traffic from points on the lines of the defendant in Florida south of Jacksonville to points on the lines of the complainant between Waycross, Ga., and Atlanta, Ga., and Birmingham, Ala., and points north and west thereof, and in the reverse direction.

RICHARD B. GWATHMEY for complainant.

CHARLES T. ABELES for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS PATTERSON, JOHNSON, AND KNUDSON.

BY DIVISION 3:

The defendant filed exceptions to the report proposed by the examiner, and the complainant replied. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

By complaint filed August 15, 1951, the complainant alleges that the refusal of the defendant to accept or deliver in interchange at Jacksonville, Fla., certain traffic trans-

ported jointly by the parties complainant and defendant which is now interchanged at Thalmann, Ga., is arbitrary and unreasonable, and that the defendant's conduct constitutes a breach of duty to establish and observe reasonable rules, regulations, practices, and facilities for the interchange of traffic and for the operation of through routes, in violation of sections 1(4), 1(6), 1(11), and 3(4), of the Interstate Commerce Act; that the traffic affected is subjected to undue and unreasonable prejudice and disadvantage, in violation of section 3 of the act; and that the defendant's conduct is in contravention of the national transportation policy.

The traffic affected is that from points on that portion of the complainant's lines formerly comprising the line of the Atlanta, Birmingham & Coast Railroad Company[1] west of Waycross, Ga., and points beyond, to points in Florida on the defendant's lines south of Jacksonville, and in the reverse direction. The present interchange point for this traffic, Thalmann, lies on a portion of the line of the predecessor, A. B. & C., which will be abandoned under authority granted in Atlantic Coast Line Railroad Company Abandonment, 275 I. C. C. 810, decided December 18, 1950, and disposed of without a printed report. The acquisition of the A. B. & C. provided the Coast Line with duplicate lines of track between Brunswick, Ga., and Sessoms, Ga., which lies approximately 80 miles west of Brunswick over the former line of the A. B. & C. through Thalmann. After abandonment of the track from Anguila, Ga., to Alma, Ga., the Coast Line will operate between Brunswick and Sessoms over rails originally a part of the Coast Line from Brunswick to Waycross, 57 miles, and thence over another portion of the lines acquired from the A. B. & C., from Waycross to Sessoms, 27 miles. The desirability of the operation over the somewhat longer line through Waycross rather than

[1] The Atlanta, Birmingham & Coast Railroad Company, hereinafter called the A. B. & C., on January 1, 1927, acquired and assumed operation of the Atlanta, Birmingham & Atlantic Railway Company, called the A. B. & A. The complainant, called the Coast Line, acquired financial control of the A. B. & C. at that time and absorbed that road into its own system on January 1, 1946.

through Thalmann is indicated by the fact that the line between Waycross and Sessoms is presently a part of the main-line operation of the Coast Line from Jacksonville to Atlanta, Ga., and Birmingham, Ala., which must be continued in operation.

All of the traffic from Brunswick and points on the Brunswick-Waycross line, and north thereof, to points on the Coast Line west of Waycross, and in the reverse direction, will, after abandonment of the line on which Thalmann is situated, flow through Waycross, and it will consequently be necessary to establish a new interchange point for traffic from and to points on the Seaboard both south and north of Thalmann. The Seaboard proposes the interchange of all such traffic at Bladen, Ga., about 3.5 miles south of Thalmann over the Seaboard and 40 miles east of Waycross over the Brunswick-Waycross branch of the Coast Line. The Coast Line is willing to interchange at Bladen traffic originating at or destined to points on the Seaboard north of Jacksonville, but insists that the most practical interchange for traffic from or to points south of Jacksonville is at the latter point. Neither party is willing to accept the point of interchange proposed by the other, except upon order of the Commission. The Coast Line is willing to accept the same division of revenue on traffic interchanged at Jacksonville as on the traffic now interchanged at Thalmann.

Bladen lies 67 miles north of Jacksonville over the rails of the Seaboard, although the through north-and-south freight traffic of that carrier does not flow through Jacksonville but moves via Baldwin, Fla., a point about 18 miles southwest of Jacksonville. The distance from Baldwin to Bladen, over the direct line of the Seaboard, is about 72 miles, which, added to the distance of 40 miles over the Coast Line from Bladen to Waycross, results in a joint haul through Bladen of 112 miles from Baldwin to Waycross. Jacksonville lies about 72 miles southeast of Waycross over the Coast Line, and the haul from Baldwin over the Seaboard to Jacksonville and thence the Coast Line would be about 90 miles. The Coast Line does not urge

the somewhat shorter haul through Jacksonville as the principal reason for insisting that the traffic be interchanged at Jacksonville, but contends that, since the traffic would be handled from Jacksonville in fast through trains over a first-class line, the time in transit of perishable traffic interchanged at Jacksonville would generally be 24 hours shorter than if interchanged at Bladen. The Coast Line maintains fast through freight schedules for perishables and other traffic from Jacksonville to Atlanta, Birmingham, and connections beyond those points. The running time of a train leaving Jacksonville at 4:45 p. m. is 2 hours to Waycross, while the running time from Bladen to Waycross, over secondary track, is 2 hours and 30 minutes.

The present deadline for the interchange of traffic from Florida points on the Seaboard to the Coast Line at Thalmann is 8:30 p. m., but the Seaboard estimates that it could deliver the traffic to Bladen, 3.5 miles nearer Baldwin, not later than 8:15 p. m. The Coast Line contends, however, that it could not accept the traffic at that time and transport it to Waycross in time for the fast freight service from Jacksonville to Sessoms, since the train leaves Jacksonville at 4:45 p. m. and arrives at Waycross about 6:45 p. m. It leaves Waycross about one hour later and arrives at Sessoms in advance of the scheduled departure from that point, which must be not later than 11 p. m. in order to make advertised deliveries in Atlanta at the following 8 a. m. and in Birmingham at 11 a. m. It is presently possible to accept the Seaboard traffic at Thalmann not later than 8:30 p. m. and make connection with the 11 p. m. schedule from Sessoms by running a fast train from Brunswick to Sessoms timed for this purpose, the run from Thalmann to Sessoms being without interruption from the necessity of doing any considerable amount of local switching at intermediate stations.

The same schedule could not be made from Bladen to Sessoms through Waycross. This results not so much from the slightly longer haul from Bladen as from the fact that the traffic would move into Waycross on the one local daily freight schedule from Brunswick to Waycross, where the

traffic must be reclassified and switched across town before it can be attached to the fast Jacksonville-Sessoms train. The one local freight run daily from Brunswick to Waycross does necessary switching at intermediate stations as well as handling of all the traffic destined west of Waycross. It is contended by the Coast Line that, even if an additional train timed to accommodate the Bladen traffic were operated between Brunswick and Waycross, this would not solve the problem, since the time consumed in traversing the city streets of Waycross and reclassifying and switching the cars to the outgoing trains would result in the missing of schedules both at Waycross and at Sessoms. It is obvious that if the Seaboard traffic from the South were delivered at Bladen at 8:15 p. m., it could not reach Waycross prior to 10:30 p. m., which would be too late to connect with the through trains operated from Jacksonville.

The delivery of the traffic from Florida stations on the Seaboard at Jacksonville not later than 4 p. m. would also present some difficulties and would probably result in some additional expense to that carrier in operations into and at Jacksonville. Whether the additional expense would be greater than transporting the traffic an additional 54 miles in delivering it to Bladen rather than Jacksonville is not established on this record. The defendant contends that it would cost less to deliver at Bladen than to Jacksonville, since the traffic can be moved at little additional expense on the local freight schedule from Baldwin to Savannah, Ga., which contemplates the delivery of traffic requiring interchange with the Southern Railway Company at Everett, Ga.

Both the Coast Line and the Seaboard presently make one delivery daily to the interchange tracks of the other at Jacksonville, usually between 8 p. m. and 11 p. m. The Seaboard yards serving Jacksonville are at West Jacksonville, about 15 miles from Baldwin and 2.9 miles from the rail connection with the Coast Line in Jacksonville. It requires approximately an hour for a switching crew to make delivery of a cut of cars from the Seaboard yards to the Coast Line interchange track and return to its own

yards. The defendant estimates that each additional switch in excess of the regular daily interchange would cost the Seaboard $25. Seaboard traffic is set out and reclassified at Baldwin, and perishables are re-iced at that point, thus necessitating some delay before forwarding the traffic either to Bladen or Jacksonville. Five or six fast freight schedules are operated by the Seaboard from the South into Baldwin daily, but only two of these trains are operated directly into Jacksonville. One of them usually arrives at Jacksonville between 11 a. m. and 12 noon, while the other often arrives as late as 2 p. m. Trains with perishable products from the South usually arrive at Baldwin between 9 a. m. and 2 p. m. The normal running time from Baldwin to Jacksonville is about 30 minutes.

The Thalmann traffic which the Coast Line proposes shall be interchanged at Jacksonville is not large in the aggregate. During a test period of 28 days in 1951, the traffic amounted to 160 cars, an average of 5.7 cars per day, of which 24 consisted of perishables from south Florida destined to or beyond the former A. B. & C. stations. There is little movement of perishables southbound. An additional movement of 821 carloads, or 29.3 cars per day, interchanged at Thalmann during the same period, consisted of traffic from and to points north of Jacksonville, which the parties are agreed may be interchanged in the future at Bladen. The bulk of the traffic from Seaboard stations in south Florida to and beyond the former A. B. & C. stations consists of perishables, such as citrus fruits, melons, and vegetables, and phosphate rock. During 1949, 1950, and 11 months of 1951, the perishable products aggregated 1,003 carloads, an average of 28.7 per month, and the phosphate-rock movement, 3,710 carloads, a monthly average of 106. During the shipping season from October 1950 to July 1951, 318 cars of perishables were interchanged at Thalmann, of which 66 cars moved in March. The bulk of the traffic from former A. B. & C. stations to south Florida consists of lumber and crate materials.

A substantial amount of traffic is presently interchanged between the Coast Line and the Seaboard at Jacksonville, but not more than 10 percent of this traffic moves beyond

Jacksonville in line-haul service. During the first 20 days of January 1951, the Seaboard delivered to the Coast Line for movement beyond Jacksonville 13 cars, and during the same period the Coast Line delivered to the Seaboard 44 cars destined beyond Jacksonville. For many years traffic between stations on the Coast Line's rails from Waycross and Albany, Ga., and Montgomery, Ala., to points on the Seaboard in south Florida, and in the reverse direction, has been interchanged at points other than Thalmann, usually Jacksonville. The defendant concedes that, since these points are not on the former A. B. & C. lines, the logical interchange point for traffic between such points and south Florida is Jacksonville. Since the lines on which they are located parallel the former A. B. & C. and terminate at Waycross as does the former A. B. & C. line, no logical reason is apparent why the Seaboard should agree that Jacksonville is the proper interchange point for a portion of the traffic while at the same time insisting that other traffic funneled through Waycross must be interchanged at Bladen and thus move over longer secondary lines.

The reasons for continuing the interchange of traffic from and to the former A. B. & C. lines at Thalmann are largely historical. By agreement between the A. B. & A. and the Seaboard consummated in 1908, arrangements were made for the establishment of interline billing between the two roads, the joint publication of routing instructions, and the designation of Thalmann as the point of interchange of traffic between points on the A. B. & A. and points on the Seaboard south of Thalmann. With the beginning of operation of the A. B. & C. under control of the Coast Line, on January 1, 1927, and after absorption of the subsidiary by the parent line in 1946, the routing arrangements of the predecessor line with the Seaboard were continued. In authorizing the abandonment of the line between Alma and Anguila, division 4 of the Commission said, in *Atlanta Coast Line Railroad Company Abandonment, supra:*

> Applicant states that, in the event of abandonment, the overhead traffic now handled over the line would be moved in as good, if not better, service via available alternative routes. For instance, arrangements would

be made for traffic to and from southern Florida, now interchanged with the Seaboard Air Line at Thalmann, to be turned over to the applicant at Jacksonville for handling via the southern division through Waycross. Applicant's present service between Jacksonville and Waycross is adequate to take care of the additional tonnage without delay. The traffic to and from Brunswick now interchanged with the Seaboard Air Line at Thalmann would be interchanged, after abandonment, at Bladen.

The Seaboard contends that the delivery of the south Florida traffic to the Coast Line at Jacksonville not later than 4 p. m. would necessitate the running of an additional daily train each way between Baldwin and Jacksonville at a cost to the Seaboard of $93 per day, and, if an additional switch from the West Jacksonville yard should be necessary, the cost of running the additional train would be augmented by an additional expense of $25 per day for the switching service. The Seaboard takes the position that the expense of additional service necessitated by the abandonment of a portion of the Coast Line's rails should be borne by that carrier.

Although some rearrangement of train schedules and switching operations might be necessary in order to make the 4 p. m. deadline, the evidence herein is not convincing that it would be necessary for the Seaboard to increase its present train service between Baldwin and Jacksonville in order to handle the moderate increase in traffic resulting from a shift of the interchange point as proposed by the Coast Line from Thalmann to Jacksonville. The schedule for one of the two trains from the South now arriving in Jacksonville between 11 a. m. and 2 p. m. could doubtless be rearranged to meet the deadline. It appears that the late afternoon trains northbound on the Coast Line are usually run in more than one section, and the later sections could accommodate perishable traffic arriving in Jacksonville after the usual scheduled departure. It is not shown that additional switching crews would be required, or that the present yard facilities would be inadequate. The Seaboard employs 20 or more switching crews daily in the

Jacksonville yards, which will hold 1,500 cars, and the addition of one or two cars of perishables and six or eight cars of non-perishable freight daily would be negligible. Even if the Seaboard traffic should not be delivered in time to go forward on the afternoon fast-freight schedules of the Coast Line, it would be forwarded on the same early morning trains with which the traffic if interchanged at Bladen as proposed by the Seaboard would make connection at Waycross. The delay would apparently be of no great importance, except in the case of perishable freight, which it appears could in most instances be delivered in time to go forward on the afternoon schedules.

The defendant contends, on brief for the first time, that if it is required to interchange this traffic with the Coast Line at Jacksonville, it would be deprived of its long haul, in violation of section 15(4) of the act. Since the revenue earned by the defendant on the traffic would be the same with interchange at either Bladen or Jacksonville, we are unable to agree that requiring the defendant to interchange the northbound traffic at Jacksonville, thus relieving it of the necessity of performing an additional haul of 54 miles, would contravene the provisions of section 15(4). If it were conceded, however, that the defendant would be short-hauled on northbound traffic, it is obvious that the complainant would also be short-hauled to the same degree on southbound traffic. The complainant denies that there is any occasion for a claim by the defendant that it would be short-hauled since, it is stated, the defendant receives revenue based on its haul to Savannah, Ga., which is longer than to Thalmann, Bladen, or Jacksonville.

The complainant contends, also, that since the provisions of section 15(4) may not be invoked when to do so would contravene the provisions of section 3, and since prejudice would result from the defendant's refusal to interchange this traffic at Jacksonville, the provisions of section 15(4) are not here available to the defendant. This contention seems to be based upon the argument that, since the Seaboard voluntarily short-hauls itself by interchanging traffic with the Southern at Jesup, Ga., the refusal of the defendant to accept the considered traffic at Jackson-

ville would result in discrimination against the complainant in violation of section 3(4). That paragraph provides that carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines. We believe it is unnecessary to decide whether there is present here such discrimination between carriers as would render inoperative the provisions of section 15(4), since it appears to us that the positive mandate of section 3(4) to the effect that carriers shall afford reasonable and proper facilities for the interchange of traffic between their lines and connecting lines warrants the prescription of Jacksonville as the point of interchange for this traffic. We think, also, that the circumstances here present may reasonably be considered as falling within exception (b) of section 15(4), since the proposed route through Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation.

We find that the traffic described herein from points on the Seaboard south of Jacksonville to points on the Coast Line from Waycross to Atlanta and Birmingham, and points on connecting lines, and in the reverse direction, transported jointly by the complainant and the defendant, should be interchanged at Jacksonville under the joint rates and the divisions thereof presently in effect via Thalmann, or as such rates or divisions may be lawfully modified from time to time.

No order will be entered. If the defendant does not, within a reasonable time, enter into the necessary and suitable arrangements for interchange at Jacksonville of the traffic described herein, the matter may again be brought to our attention for such further action as may be appropriate.

By the Commission, division 3.

GEORGE W. LAIRD,
Acting Secretary.

(SEAL)

Appendix A-5

This report will not be printed in full in the permanent series of Interstate Commerce Commission reports.

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 16872.

ATLANTIC COAST LINE RAILROAD COMPANY ABANDONMENT

Submitted November 27, 1950. Decided December 18, 1950.

Certificate issued permitting abandonment by the Atlantic Coast Line Railroad Company of a line of railroad extending from Alma to Anguilla, approximately 57.5 miles, in Bacon, Pierce, Brantley, and Glynn Counties, Ga. Conditions prescribed.

R. B. GWATHMEY for applicant.

FREDERICK F. KATOR, SAMUEL EVANS, JR., HOMER L. CAUSEY, and EDWARD B. LILES for protestants.

H. L. KELLER, E. H. TROTTER, and W. H. MALLARD for railway employee organizations.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MAHAFFIE, ROGERS, AND JOHNSON BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed, and the case has been argued orally. Our conclusions differ somewhat from those recommended by the examiner.

The Atlantic Coast Line Railroad Company, on February 14, 1950, applied for permission to abandon that portion of its western division main line extending from Alma to Anguilla, approximately 57.5 miles, in Bacon, Pierce,

Brantley, and Glynn Counties, Ga. Protests were filed and a hearing was held. Unless otherwise indicated, all points hereinafter mentioned are in Georgia.

That portion of the line between Alma and Offerman, approximately 25 miles, was constructed by a previous owner about 1887, and the segment between Offerman and Anguilla was completed in 1902. Later the line became part of the Atlanta, Birmingham & Coast Railroad Company, the properties of which were acquired by the applicant on January 1, 1946. Finance Docket No. 15015, *Atlantic Coast Line R. Co., et al. Purchase,* 261 I. C. C. 820, decided December 12, 1945. Roughly, the portion of the applicant's western division involved herein lies about midway between its southern division extending from Waycross to Brunswick, on the south, and the line of the Southern Railway Company between Brunswick and Hazlehurst, on the north. The maximum divergence in either direction does not exceed 20 miles, and because of its proximity to the other lines of railroad in the area, the applicant considers the line proposed to be abandoned as an unnecessary duplication of railroad facilities.

When acquired, the line was in a run-down physical condition, and since then no substantial improvements have been made thereon. Maintenance was deferred last year in anticipation of the proposed abandonment, so that its present state is somewhat below the normal standard of comparable system lines. Based on an actual field survey, the applicant estimates that it would require a 4-year program costing approximately $1,844,847 to rehabilitate the line. The major items and the costs thereof are shown as follows: Labor $543,902, cross ties $415,800, 100-pound relay rail $226,357, tie plates, $156,364, creosoted piling $129,240, engineering and contingencies $128,393, and gravel ballast $91,529. Normal maintenance averages about 40 cents a track foot, or approximately $121,000 annually.

Within the limits of the proposed abandonment are 7,696 lineal feet of open deck timber trestles and one 20-foot deck plate girder steel span. The steel bridge is located between Alma and Rockingham. Of the wooden trestles,

1,414 lineal feet are located between Alma and Offerman; 4,880 lineal feet are between Offerman and Hortense; and 1,402 lineal feet are between Hortense and Anguilla. These bridges are more than 40 years old. Approximately 25 percent of the original piling remains and the other 75 percent has been cut off at the ground line and frame bents set up. Only 600 lineal feet of the trestles have been redriven with creosoted piling and of these 40 percent have been cut off and capped, but stringers have not been installed. The applicant estimates that almost 7,000 lineal feet of trestles are in such condition that they should be completely rebuilt in accordance with its standard practice. To replace the trestles would cost an estimated $54.70 per lineal foot. The ties are in fair condition although it is stated that 15 percent thereof require renewing. Cross ties, for the most part, are untreated cypress. Not more than 5 percent are low grade creosoted. The applicant estimates that it will require approximately 35,000 cross ties and 25,000 feet board measure of switch timber each year for the next 4 years to place the line in good condition. During 1949, a total of 10,324 cypress cross ties, 6,279 creosoted cross ties, 6,100 feet board measure creosoted switch ties, and 13,084 feet of treated bridge ties were inserted in the line. Comparable figures for 1948 were, in order, 17,244, 9,749, 18,946, and 5,180. No tie plates are on the tangent track and 90 percent of the curves have only small plates.

About 9.6 miles of the line are laid with 80-pound rail rolled in 1905-06, and 47.9 miles are 55- and 60-pound rolled in 1882-1902. The applicant states that all the rail is badly bent and worn, and that the entire line should be replaced with 100-pound relay rail, fully tie plated, if operations are to continue in the future. The 100-pound relay rail, estimated at a cost of $35 a ton, would be used because of the scarcity and obsolescence of lighter weight sections for relaying purposes. To place new rail on the line would cost between $72 and $76 a ton. The rehabilitation project also provides for gravel or slag ballast instead of the sand topsoil now on most of the line. Culverts and the only water tank on the line are in good condition generally, and only

minor repairs would be required. Five small frame depots and a number of section houses are all in a dilapidated condition. The applicant estimates the gross salvage value of the line at $157,939, less the cost of removal $113,305, or a net salvage value of $44,634.

Stations on the line, the estimated population at each, and the mileage, by highway, to the nearest station on another line of railroad, in order, are as follows: Rockingham, 200, 3; New Lacy, 57, 6; Coffee, 200, 11; Mershon, 200, 10; Bristol, 114, 7; Offerman, 483, served also by applicant's line between Waycross and Jesup; Hortense, 250, served also by applicant's line between Folkstone and Jesup; Needmore, 0, 3; Fendig, 0, 7; Browntown, 339, 6; and Thalmann, 150, served also by the Seaboard Air Line Railway Company's line between Jacksonville, Fla. and Savannah, Ga. Except for Offerman, Hortense, and Thalmann, all are nonagency stations. Only carload traffic is handled at New Lacy. The applicant estimates the population in the territory tributary to the line at approximately 5,467 persons. The country traversed is comparatively flat, without deep cuts or steep grades, and except for the trestles on the line presents no engineering difficulties from operational or maintenance standpoints.

An all-weather State highway parallels the line for its entire length, and except for Offerman, passes through every community served by the line. Offerman is on another hard-surfaced State highway extending in a northeasterly-southwesterly direction between Jesup and Waycross. Other hard surfaced or improved soil roads traverse the area. No regular common carrier truck or bus lines serve the stations that would be left without railroad service in the event of abandonment. Several common and contract motor carriers of general commodities are authorized to operate over irregular routes to and from the stations on the line.

Since December 16, 1948, service on the line has consisted of scheduled freight trains operated daily from Brunswick to Offerman and return, and from Sessoms to Thalmann and return. Applicable restrictions limit the

speed of trains to 25 miles an hour. All passenger service was discontinued effective June 5, 1949. If the proposed abandonment is permitted the applicant would add an additional train and operate double daily freight service on its southern division between Brunswick and Waycross, over which all the traffic now handled on the line would be rerouted. In 1949 it was necessary to operate 17 extra freight trains to handle traffic via Waycross. Alma would continue to be served by the local freight train operated daily, except Sundays, from Fitzgerald to Waycross making a side trip of approximately 7 miles from Sessoms; and continued service to Anguilla would be furnished direct via the applicant's southern division.

Passengers carried on the line during the year 1948, and the period of 1949 when passenger service was rendered, together with the total system-revenues derived therefrom, in order, were as follows: Local 2,954 and 680, producing $530 and $122; interline 1,699 and 391 with revenues of $1,231 and $283; and overhead 2,733 and 627, or $6,399 and $1,468. Freight traffic handled during the years 1948-49, in order, totalled 450 and 357 carloads of interline traffic containing16,515 and 14,685 tons; and 21,967 and 18,152 carloads of overhead freight containing 749,262 and 614,916 tons. Practically all overhead traffic was handled in interstate commerce. No traffic moved locally between points on the line. Of the interline traffic 399 and 237 carloads, respectively, consisted of out-bound pulpwood. Other products of forests accounted for 6 and 17 carloads in the respective years. Except for some fertilizer and road building materials, the in-bound traffic was negligible. Traffic to and from Alma, Offerman, Hortense, and Anguilla was not included in the computations because, as stated heretofore, those stations would continue to be served by other lines of the applicant.

Financial results of operation on the line during the years 1948-49, in order, are shown by the applicant (excluding Alma, Anguilla, Hortense, and Upperman, which points the applicant will continue to serve) as follows: Local revenues derived from passenger, mail, and express traffic

until the time that passenger service was discontinued, and from storage, demurrage, and other miscellaneous charges collected at the local stations $6,841 and $1,196; system revenues from originated and terminated traffic $16,596 and $17,277; system revenues from overhead traffic $1,886,097 and $1,550,135; total system revenues $1,909,534 and $1,568,608, of which $448,397 and $356,606 were assigned to the line, on a direct basis as to the local revenues, and on a mileage prorate basis as to originated, terminated, and overhead revenues; operating expenses on the line, maintenance of way and structures $166,936 and $96,963, maintenance of equipment $43,526 and $36,626 and transportation $154,010 and $131,921, totals $364,472 and $265,510; railway tax accruals $18,034 and $16,516; car hire (debit) $2,327 and $1,352; cost of handling the originated, terminated, and overhead traffic on other parts of the applicant's system, based on 50 percent of the gross revenues remaining after deducting the portions thereof assigned to the line, $730,568 and $606,001; totals of all expenses chargeable to the line $1,115,401 and $889,379; and net railway operating income of the applicant from operation of the line during the years indicated, treating the overhead traffic in the same manner as originated or terminated traffic, $794,133 and $679,229. If the line were credited only with a mileage pro-rate of overhead revenues, which ordinarily is considered the maximum allowable credit where such traffic is to be retained by the applicant, the operation of the line for the years 1948 and 1949 would have shown profits of approximately $67,000 and $77,000, respectively.

By another exhibit of record the applicant shows that if the revenues from the passenger traffic and the expenses of handling it were eliminated, and all the revenues from overhead traffic also were eliminated, the financial results of operation on the line for the years 1948-49 would have produced system operating losses of $311,540 and $243,326, respectively. In this computation no consideration was given to the expenses incurred by the applicant for handling the overhead traffic on the line. Accordingly, such losses are to some extent inflated. If revenues are to be

excluded entirely then the expenses chargeable thereto also must be excluded. The applicant relies primarily on the fact that it will, as later shown herein, be able to save $184,204 annually by diverting the overhead traffic now handled over the line to an alternative route.

In computing the operating expenses shown herein those for maintenance of way and structures were actual and those for maintenance of equipment were allocated to the line on the basis of system average costs. Transportation expenses, for the most part, were assigned directly to the operating equipment mileage on the runs over the line compared with system costs. Railway tax accruals represent the property taxes paid to the counties in which the line is located, and the payroll taxes were for only those employees actually employed on the line. The amounts shown for hire of freight cars are based on the car-days consumed in earning revenue at the prevailing per diem rate, plus mileage on private-line cars.

Applicant states that in the event of abandonment, the overhead traffic now handled over the line would be moved in as good, if not better, service via available alternative routes. For instance, arrangements would be made for traffic to and from southern Florida, now interchanged with the Seaboard Air Line at Thalmann, to be turned over to applicant at Jacksonville for handling via the southern division through Waycross. Applicant's present service between Jacksonville and Waycross is adequate to take care of the additional tonnage without delay. The traffic to and from Brunswick now interchanged with the Seaboard Air Line at Thalmann would be interchanged, after abandonment, at Bladen. Facilities for such interchange do not presently exist, but the applicant's engineer stated that it would be an easy matter to install a connecting track of approximately 2,500 feet at that point, and that the total cost of such construction would not exceed $15,000. It is contended that the additional train applicant proposes to operate between Brunswick and Waycross would provide more than ample service for the other traffic now moving over the western division. Applicant's southern division

is a single-track line laid with 65- and 75-pound rail. An extensive rehabilitation program thereon for the past 4 or 5 years was expected to be completed this year.

A detailed study of the overhead traffic handled on the western division in 1949 shows that a total of 221,991 additional freight-car miles would have been operated in order to move the same traffic over the alternative routes proposed. Irrespective of this fact, the applicant shows that a saving of $184,204 would have resulted in the cost of operation if the traffic moved the longer distance. Included in the 1949 cost of operation were the operating expenses and railway tax accruals on the line to be abandoned between Alma and Anguilla totaling $255,672; the expense of operating the trains beyond the line between Nicholls and Alma, and between Anguilla and Brunswick, which would be eliminated if the proposed abandonment were permitted, amounting to $35,005; and the cost of operating the 17 extra freight trains to handle business between Brunswick and Waycross amounting to $17,286, total $307,963. The cost of the proposed operations was based on the following items: Expense of providing service at Alma on a side trip from Sessoms by the train now operating from Fitzgerald to Waycross $9,402; cost of additional train between Brunswick and Waycross $105,446; and expenses for loss and damage to freight, train supplies for the additional car-miles involved over the alternative route, and insurance $8,911, total $123,759. All maintenance of way expenses and railway tax accruals were excluded by the applicant in determining the cost of the freight operations proposed in the event the line is abandoned.

Much of the opposition interposed to the applicant's proposal was presented by individuals interested in the pulpwood industry in and around the territory tributary to the line. They included timber growers, producers and dealers, and representatives of two large paper manufacturers, one with a pulp plant located at Brunswick and the other at Port Wentworth, in the vicinity of Savannah. An important consideration in locating the plants at those points was the accessibility to the source of raw material in

the form of pulpwood available in the area served by the line. The plant at Port Wentworth, together with its land and timber holdings, represents a total investment of $35,000,000.

Construction of the Brunswick mill was completed in 1938, at which time its capacity was about 150 tons of sulphate wood pulp a day. To replace the plant at present day prices would require an investment of between $20,000,000 and $30,000,000. Production has doubled since operations were commenced so that now the mill is turning out 100,000 tons of wood pulp annually. It is expected that the output of the plant will be increased another 100 tons a day by the end of 1950. At the present rate of production the plant consumes 200,000 cords of pulpwood each year, of which 140,000 cords are received by rail. The anticipated increase in production would require an additional 65,000 or 70,000 cords. Freight charges paid by the company on in-bound and out-bound traffic amounts to about $1,500,000 annually, of which approximately $420,000 represents the charges paid on in-bound pulpwood. Direct rail service at the mill is provided by the applicant and the Southern Railway, but about 60 percent of the in-bound rail pulpwood shipments originates on and is delivered by the Atlantic Coast Line. Constant efforts are exerted to consolidate the source of the pulpwood supply required by the mill as close to Brunswick as possible. It is hoped that eventually all the pulpwood required to operate the mill will be obtained within 100 miles thereof.

Pulpwood delivered to the mill by rail is purchased at an average price of $10 for each unit of 168 cubic feet, f.o.b. cars. A unit contains 40 cubic feet more than a cord, and there is an average of 15 units in a carload. Because of the greater ease in unloading at the plant, a premium of 25 cents a unit additional is paid when the pulpwood is loaded on a flat rack car rather than in a box car. Wood also is received at the plant by truck. The capacity of the trucks used for such hauling varies, and is governed to some extent by the condition of the roads and bridges that must be traversed. A large truck is capable of hauling as

much as 3.6 cords of wood. Experienced witnesses for the pulpwood industry contend that the maximum truck haul of wood to the mill would not exceed 40 miles, and that from the woods to a railhead should not be more than 10 miles. Beyond those distances truck transportation of pulpwood is impracticable, and reduces or entirely eliminates the profit a landowner may expect to derive from the sale of stumpage.

It is generally conceded that the entire area along the line proposed to be abandoned is one of the best sources of pine pulpwood in south Georgia. The growth and utilization of timber for the manufacture of paper and paper products in this region is of comparatively recent origin, and responsible persons in the industry anticipate vast expansions in the immediate future. Conservation practices in the form of better fire protection, reforestation, and harvesting on a sustained yield basis are being advocated and encouraged among the landowners in the territory so that an adequate and stabilized production of wood will be available at all times. A distinct change has taken place with respect to the harvest of timber in the past 10 years. Prior to 1935, southern forest lands were worked heavily for naval stores products, particularly turpentine, and as a result, large acreages were left stagnant to fall and rot after all the turpentine had been extracted. Such wood is highly desirable and eagerly sought by the large plants engaged in the manufacture of pulp. The protestants state that under proper development there would be at least 11 separate mills interested in procuring pulpwood from the territory tributary to the line. Only three companies are drawing wood from the area at present. A pulpwood producer testified that in the past he shipped as high as 20 carloads of wood a week on the line.

Witnesses for the pulpwood industry estimate that the territory tributary to that portion of the line between Offerman and Alma contains a total of approximately 120,000 acres of land, heavily to moderately timbered, and held by numerous landowners in relatively small parcels. Under modern scientific growing and marketing practices,

the potential productive capacity of this area is possibly .5 to .75 cord per acre per year, or about 90,000 cords annually, valued at close to $1,000,000. Most of this timber would be available for pulpwood. An estimated 2½ to 3 cords per acre are now ready for market and with adequate rail facilities, a continuous supply for the future is assured. Some used as saw timber would be more valuable in that form, but the growing period would be much longer. Pulpwood can be grown from 10 to 20 years while it requires from 25 to 50 years to produce saw timber. Under ordinary conditions, any lumber that might be produced in the area would move to market by truck.

Protestants contend that the proper development of the territory along the line west of Offerman as a source of pulpwood has been hampered in the past by the inability of the applicant to furnish an adequate supply of rack cars when ordered. Although at times car shortages occur on all railroads, they state that the situation in this respect is worse on the line proposed to be abandoned than it is on other portions of the applicant's system. According to the protestants, the service on the western division began to deteriorate at the time the applicant purchased the line, and that since then it has become progressively worse. For the past 18 months or 2 years the service has been particularly inferior. On occasions producers of pulpwood were required to withdraw men from the tributary territory for want of pulpwood cars. The representative of the procurement division for the Port Wentworth plant stated that if a reliable supply of needed equipment were available, his company would immediately start originating 40 carloads of pulpwood a week on the line west of Offerman, and that such shipments could be doubled within 6 months thereafter. The Brunswick plant, under like circumstances, could increase its rail pulpwood shipments in that area by an estimated 40 percent. Neither, however, is interested in using the line unless there is a distinct improvement in the service offered thereon. The former is committed to acquire, in the near future, approximately 2,200 acres of woodland near Mershon. Negotiations for the tract were

commenced about a year ago, at which time the difficulty of procuring cars was not realized because the company had not been active in obtaining pulpwood along the line for at least 2 years. If the line is abandoned, the company expects the value of the woodland to depreciate at least 50 percent.

Only a limited number of pulpwood flat cars are available for distribution, and during periods of peak demand, particularly in dry weather, when conditions for cutting the timber are more favorable, shortages in car supply are bound to occur. Applicant maintains that pulpwood cars are distributed on the system without discrimination and to the best interest of all concerned; that orders for rack cars are filled as they are received; that the allocation of cars is made in the applicant's general offices at Wilmington, N. C.; and that there is no planned effort to deny cars to shippers on the western division or to favor those on the southern division. Applicant expects to augment its supply of especially equipped pulpwood cars by the addition of some 700 units which should alleviate, to some extent, the car shortage situation.

Pulpwood shipments to the Brunswick and Port Wentworth plants move on intrastate rail rates which are between 10 and 15 percent lower than interstate rates for comparable mileages. Protestants contend that abandonment of the line would be a serious blow to the pulpwood procurement requirements of these mills. In each instance such abandonment would result in a longer rail haul and a higher freight rate for the raw material. A witness for the Brunswick plant testified that during the last 6 months of 1949, the pulpwood originated on the line destined to Brunswick produced Atlantic Coast line system revenues of approximately $11,554, and that to handle the traffic the longer distance via Waycross would have cost the shippers an additional $2,889. On the basis of present rates, the witness estimated that the potential pulpwood traffic in the territory tributary to the line would produce annual system revenues for the applicant of $160,454.

An independent dealer in pulpwood owns about 2,300 acres of timberland in Bacon and Pierce Counties, which is traversed by the applicant's western division. He used the line for about 12 years but in 1949 discontinued such use because of the deteriorated service afforded and the inability to procure a reliable supply of pulpwood cars when ordered. Because of such inability he lost 3 carloads of wood early in 1950. At one time the witness shipped as high as 12 carloads of pulpwood a week over the line. His volume decreased steadily, however, and finally disappeared entirely in the tributary territory. He stated that from a financial standpoint it would be unprofitable to handle the wood by truck. If cars were available his shipping points would be Coffee, Mershon, and Bristol, approximately 11, 15, and 18 miles, respectively, east of Alma. At the time of the hearing, the witness was shipping pulpwood cut from leaseholds, about to expire, located on the Southern Railway. In addition to the pulpwood business the witness also conducts a mercantile establishment at Bristol. Some feed, hardware, wire fencing and other supplies are received over the line. The witness stated that from his experience it seemed as though the applicant did not want the traffic, and cited instances of unusual delays in the rail delivery of certain shipments.

Another producer of turpentine and pulpwood at Mershon owns about 1,000 acres of timberland with an average of 6 or 7 units of pulpwood to the acre. The turpentine produced is hauled by private truck to the distillation plant. While the witness shipped pulpwood over the line in the past, he has not used it so far in 1950.

Alma is the county seat of Bacon County. There are about 900 farmers in the county, and 62.5 percent of its total area is in woodland. In 1940 Alma had a population of 1,840 inhabitants. It now has an estimated population of approximately 2,700. Civic leaders fear that abandonment of the line would retard the normal development of the community even though rail service at that station will continue to be furnished by the applicant. In this connection, however, protestants expressed the opinion

that the service at Alma by a train making a side trip from Sessoms would be worse than the inadequate service now provided.

Business concerns at Alma complained of the general lack of cooperation, and of the slow delivery service afforded by the applicant over the line. They state that traffic from Savannah, on occasions, was diverted from the line and handled through Waycross in preference to the more direct route from Offerman. The distance between Offerman and Alma is approximately 25 miles. If the line is abandoned Alma traffic to and from Savannah would have to move circuitously via Sessoms and Waycross to Offerman, approximately 53 miles. Applicant admits some diversion of traffic from the line in the past but only insofar as it constituted an operating convenience. No deliberate diversion was made to reduce the amount of traffic that moved over the line.

An operator of a farmers' enterprise, consisting of a feed mill and cotton gin at Alma, endeavored without success to prevail upon applicant's management to build a spur track about 0.25 mile to his plant. The reasons for the refusal to do so were predicated upon the fact that the construction of such a spur would have to cross an arterial highway, and the applicant's management was not convinced that the spur would be a profitable venture for the railroad. The witness stated that he has a preference for railroad service and that his rail shipments would increase with a spur track direct to the mill. In connection with the business he receives carload shipments of fertilizer which is distributed by truck from the railroad car to farmers in the area. Abandonment of the line would increase the truck haul to his customers if all the fertilizer has to be trucked from Alma rather than from cars spotted at, and the distribution made from the stations on the line. The witness expects to handle a minimum of 25 carloads of fertilizer in 1950 if rail service at those points is available. The investment value of the mill was estimated by the witness as between $75,000 and $100,000. The proposed abandonment would not affect the rail facilities now serving this shipper.

A wholesale grocery concern at Alma owns a 325 by 52 ft. corrugated steel warehouse, with a depreciated value estimated at $6,000, located on a siding of the applicant. It receives carload shipments of flour from Oklahoma, feed from Birmingham, and milk from Savannah. No out-bound shipments are made by rail. In 1949 a total of 73 in-bound carloads, and the equivalent of 79 carloads, of 50,000 pounds each, of less-than-carload traffic were received by rail. Freight charges paid thereon amounted to more than $17,784. Annual sales of the company total about $1,250,000. The company also owns four trucks which are used to make deliveries to customers, and to handle in-bound supplies from Savannah. The witness for the concern stated that it would prefer rail service on all of the in-bound traffic if such service by the applicant could compete with trucks. The proposed abandonment would not affect the track leading to the warehouse of this protestant.

Other witnesses appeared at the hearing and testified in opposition to the applicant's proposal. A farmer owning 388 acres of land about 1.25 miles south of Mershon raises beef cattle, tobacco, and timber. He receives all of his supplies, including fertilizer, by truck from Blackshears, and sells his livestock and tobacco at the market there. Although the witness never shipped pulpwood over the line in the past, he now has some ready to cut, and if the proposed abandonment is permitted, it would be necessary for him to truck the wood a distance of at least 9 miles to Patterson for rail loading. And the manager of the Brunswick Chamber of Commerce testified concerning the possibilities of industrial development of that community in so far as it related to potential added traffic to the line. Mention also was made of the resumption of operation under new management of a Brunswick plywood plant which had been closed for several months, but the witness was not familiar enough with the business to state whether railroad service was needed and being used since the plant was reopened.

The operation of the line during the past 2 years has not resulted in system losses. However, in determining whether its operation should be continued in the future,

several other factors require our consideration. The applicant operates other lines which would be used as alternate routes for handling the overhead traffic now moving over the line in question, and it shows that the service offered in connection therewith will be comparable, and in some instances superior, to the service presently afforded such traffic. Also, a saving of $184,000, annually, will be realized thereby. Under such circumstances, the applicant cannot be expected to maintain and operate the line primarily for the movement of overhead traffic that can be handled more efficiently and economically over other system lines. See *Chicago, B. & Q. R. Co. Abandonment,* 271 I. C. C. 261, 279.

As previously indicated, no local freight moved over the line during the two years, 1948-49; and of the 807 carloads of traffic originating or terminating at the stations thereon, during that two-year period of operation, 171 carloads consisted of out-bound pulpwood. The total system revenues from such traffic amounted to only $33,167, which was less than 13 percent of the maintenance cost alone. It is conceded by the Brunswick pulpwood interests that all the pulpwood in the tributary territory east of Hortense, also served by the applicant's Folkstone-Jesup line, is within trucking distance of their plant, and that none of it could be expected to move by rail even though the line is continued in operation. No industries are located along this segment, and no evidence was presented indicating that there is any need for railroad service to and from points on that portion of the line. As to the remainder of the line from Hortense west to Alma, the record shows that the maximum distance from any point thereon is only 11 miles to another line of railroad. In many instances such distance is considerably less. The more populated communities of Hortense and Offerman will continue to receive rail service via applicant's branch lines extending north and south through that territory. Thus it appears that the additional truck haul from any station on the line to another railroad will not be excessive.

Considerable work must be done in the immediate future if the line is to remain in service. A major item

of expense in the rehabilitation program, estimated by applicant's assistant chief engineer to cost a total of $1,800,000, involves the replacement of practically all the trestles on the line. In the light of the prospective traffic that would be available to the applicant for rail transportation in the tributary territory, an expenditure of such a large amount for rehabilitation would be improvident.

No doubt the abandonment proposed will result in some inconvenience, in the form of a longer truck haul, to the shippers of pulpwood in the area, but the added cost to them will be insignificant compared to the loss that reasonably may be anticipated by applicant's continued operation of the line. The record also shows that the abandonment will cause some slight increase in rates on intrastate shipments of pulpwood to the plants at Brunswick and Savannah. Heretofore, we have held that the matter of rates is not of controlling importance in abandonment proceedings. See *Chicago, B. & Q. R. Co. Abandonment,* 193 I. C. C. 233, 237, and *Texas & N. O. R. Co. Abandonment,* 252 I. C. C. 37, 41.

Giving consideration to the substantial savings which can be effected in handling the overhead traffic, to the large expenditures required for rehabilitation, and to the absence of a substantial public need for the line, the conclusion is warranted that the continued maintenance and operation thereof would impose an unnecessary and undue burden upon the applicant and upon interstate commerce.

The examiner recommended that the portion of the line between Alma and Offerman, approximately 24.7 miles, be retained for the benefit of the pulpwood shippers in that area, and that the application be granted as to the remainder of the line. It is obvious that the future operation of this segment would serve little public need and would constitute an unwarranted drain upon the applicant's resources. For the reasons previously shown, we are of the opinion that the application should be granted in its entirety.

Representatives of certain railway employees' organizations entered appearances at the hearing and requested that if the application were granted, we impose conditions

for the protection of employees similar to those set forth in *Chicago, B. & Q. R. Co. Abandonment,* 257 I. C. C. 700. Our certificate will contain, by reference, the conditions requested.

Subject to such conditions, we find that the present and future public convenience and necessity permit abandonment by the Atlantic Coast Line Railroad Company of the line of railroad extending from Alma to Anguilla, approximately 57.5 miles, in Bacon, Pierce, Brantly, and Glynn Counties, Ga., described herein. On the understanding that before recording in its books the related journal entries to show the retirement of the line from service, the Atlantic Coast Line Railroad Company first shall submit, in duplicate, the entries for our consideration and approval, an appropriate certificate will be issued, effective from and after 40 days from its date, in which suitable provision will be made for the cancellation of tariffs.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 18th day of December, A. D. 1950.

Finance Docket No. 16872.

Atlantic Coast Line Railroad Company Abandonment.

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;

IT IS HEREBY CERTIFIED, That, subject to the conditions for the protection of employees stated in said report, the present and future public convenience and necessity permit abandonment by the Atlantic Coast Line Railroad Company of the line of railroad in Bacon, Pierce, Brantley, and Glynn Counties, Ga., described in the report aforesaid:

IT IS ORDERED, That this certificate shall take effect and be in force from and after 40 days from its date. Tariffs applicable to the line herein permitted to be abandoned may be canceled upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act.

IT IS FURTHER ORDERED, That the Atlantic Coast Line Railroad Company, when filing schedules canceling tariffs applicable to said line, shall in such schedules refer to this certificate by title, date, and docket number.

AND IT IS FURTHER ORDERED, That the Atlantic Coast Line Railroad Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

By the Commission, division 4.

W. P. BARTEL,
Secretary.

(SEAL)

Order.

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 2nd day of February A. D. 1953.

Finance Docket No. 16872

ATLANTIC COAST LINE RAILROAD COMPANY ABANDONMENT

Upon consideration of the record in the above-entitled proceeding, the report and certificate by the Commission, by Division 4, dated December 18, 1950, effective 40 days from its date, permitting the Atlantic Coast Line Railroad Company to abandon that portion of its western division main line extending from Alma to Anguilla, Ga., and of the petition of the Seaboard Air Line Railroad Company, filed December 5, 1952, for leave to intervene and to be treated as a party to this proceeding for the purpose of filing an application for revocation of said certificate, or in the alternative for the prescribing of conditions, and for other relief, and of the reply of the Atlantic Coast Line Railroad Company to said petition, and

It appearing, That the Seaboard Air Line Railroad Company has not shown good cause why it should be permitted to intervene in this proceeding;

It is ordered, That said petition for leave to intervene be, and it is, hereby denied.

By the Commission.

GEORGE W. LAIRD,
Acting Secretary.

(SEAL)

Appendix A-7

INTERSTATE COMMERCE COMMISSION

No. 30882.

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

Submitted November 13, 1953. Decided January 11, 1954.

Upon further hearing, interchange at Jacksonville, Fla., of traffic between points on lines of the defendant south of Jacksonville, on one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, found required to afford reasonable and proper facilities for such interchange. Appropriate order entered. Prior report, 286 I. C. C. 669.

JAMES B. MCDONOUGH, JR., for defendant.

FRANK B. HAND, JR., for intervener.

Other appearances as shown in the prior report.

Report of the Commission on Further Hearing.

DIVISION 3, COMMISSIONERS KNUDSON, ARPAIA, and CLARKE by DIVISION 3:

The defendant filed exceptions to the report proposed by the examiner, the complainant replied, and we have heard the parties in oral argument. Exceptions and

requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

In the prior report, 286 I. C. C. 669, division 3 found that all traffic between points on the lines of the defendant, hereinafter sometimes called the Seaboard, south of Jacksonville, Fla., on the one hand, and points on the lines of the complainant, sometimes called the Coast Line, from Waycross, Ga., and Birmingham, Ala., and points on lines north and west of those termini, on the other, when transported jointly by the complainant and the defendant, should be interchanged at Jacksonville, at the joint rates and divisions presently in effect via Thalmann, Ga., or as such rates or divisions may be lawfully modified from time to time. No order was entered, but the division stated that if the defendant did not within a reasonable time enter into the necessary arrangements for interchange at Jacksonville of the described traffic, the matter might again be brought to the attention of the Commission for such further action as might be deemed appropriate. Upon petition of the defendant, the proceeding was assigned for further hearing, which has been held. At the further hearing the Macon, Dublin & Savannah Railroad Company intervened in support of the defendant.

The issues.—As stated in the prior report, the necessity for the establishment of a new interchange point for the traffic handled jointly by the Coast Line and the Seaboard between Seaboard stations south of Jacksonville and points north and west of Waycross arises from authority granted by the Commission in Finance Docket No. 16872, unreported, but indexed at 275 I. C. C. 810, for the abandonment by the Coast Line of a portion of its line of track between Brunswick, Ga., and Sessoms, Ga., on which the present interchange point, Thalmann, is located. The parties are in agreement that the traffic presently interchanged at Thalmann, except that previously described as the subject of this complaint, and with certain other minor exceptions which will be discussed later, should be interchanged at

Bladen, Ga., a point on the Seaboard about 3.5 miles south of Thalmann and on an alternate line of the Coast Line between Brunswick and Waycross.

The complainant seeks an order requiring the defendant to enter into arrangements for the interchange at Jacksonville of the traffic between Seaboard stations south of Jacksonville, on the one hand, and points on the rails of the former Atlanta, Birmingham & Coast Railroad Company, hereinafter designated the A. B. & C., now a part of the Coast Line system, from Waycross to Atlanta and Birmingham and points on connecting lines beyond Atlanta and Birmingham, on the other. Traffic between points on the Coast Line, other than the former A. B. & C. stations, and Seaboard stations in south Florida is now interchanged at Jacksonville, and is not in issue herein. Where traffic to or from the former A. B. & C. lines is referred to, it will include also, unless otherwise indicated, overhead traffic to or from points on the lines of carriers connecting with the Coast Line at Atlanta and Birmingham, which are the western termini of the former A. B. C. lines.

Traffic between the former A. B. & C. points and Jacksonville proper, as well as that to or from points on the lines of the Florida East Coast Railway Company south of Jacksonville, which may presently be routed over the Seaboard through Thalmann, was specifically excluded by the complainant from the traffic which would be interchanged at Bladen. At the further hearing, upon protest of the defendant that such an arrangement would have the effect of depriving the Seaboard of an opportunity to participate in the movement of this traffic, the complainant stated that if the Seaboard desires to continue its present participation in movements to and from Jacksonville proper, or to and from Florida East Coast Railway stations, the Coast Line will concur in the routing over the Seaboard between Bladen and Jacksonville.

Concurrently with the filing by the defendant of its petition for reopening herein, the defendant also filed with the Commission a petition for leave to intervene in Finance Docket No. 16872 for the purpose of filing a petition for

reopening of that proceeding, further hearing therein, and consolidation with the instant proceeding. That petition was denied by the Commission. Nevertheless, the defendant insists that, by its delay of more than two years in applying the authority for abandonment, the complainant has been guilty of laches and has lost the right to effect the abandonment or to seek an alternate interchange point in lieu of Thalmann. In its amended answer, filed by permission of the examiner at the further hearing, the defendant withdrew its offer to substitute Bladen or any other interchange point in lieu of Thalmann, "unless and until the complainant has secured further and appropriate authority for the abandonment of the portion of the old Atlanta, Birmingham & Coast Railroad." The defendant reiterated on brief its position that it does not agree to the substitution of Bladen or any other junction or interchange point for the traffic "hereinafter described", meaning presumably the A. B. & C. traffic, but the defendant states that it is still willing to substitute Bladen as the interchange point for the so-called Brunswick traffic, meaning presumably traffic other than that in issue herein to, from, or beyond the A. B. & C. stations.

In view of the fact that the defendant disclaimed any intention, in submitting its amended answer, to broaden the issues herein, we conclude that the only matter in issue is the determination of a proper point of interchange for traffic between the defendant's south Florida stations and the former A. B. & C. stations, and points beyond, when the complainant shall have exercised its authority to abandon the line on which Thalmann, the present interchange point, is located. In assigning the proceeding for further hearing, the Commission indicated a desire that the parties, in addition to the further evidence submitted as to the relative merits of Bladen and Jacksonville as the interchange point, should be prepared to offer evidence as to the propriety, or impropriety as the case might be, of establishing Callahan, Fla., as the interchange point, in lieu of or in addition to the interchange points previously under consideration. Such evidence has been introduced.

The position of the intervener.—The line of the Macon, Dublin and Savannah, 92 miles in length, running from Macon, Ga., to Vidalia, Ga., connects at the latter point with the Seaboard, and at Macon with three other carriers having direct rails into Atlanta. The intervener's rails thus form a link in one of the important routes from Seaboard stations in south Florida to Atlanta. All of the intervener's common stock is owned by the Seaboard, but its bonds are individually owned. Over the last 12 years, intervener has engaged in a long-range program of rehabilitation, including re-laying of track with heavy rail and replacement of steam locomotives with diesel power. During this period overhead traffic has trebled, and in 1952 more than 70 percent of the tonnage handled by this carrier represented overhead or bridge traffic. About 30 percent of the intervener's overhead tonnage originates at or is destined to Seaboard's south Florida stations.

It is the intervener's position that the establishment of Jacksonville as the interchange point on the south Florida traffic going to Atlanta, Birmingham, and points beyond those termini would divert a substantial portion of the traffic now transported by the intervener to the Jacksonville route. In the opinion of the intervener's executive vice president, if the Seaboard should interchange traffic having origin or destination south of Jacksonville with the Coast Line at Jacksonville, it would open up a new route and place the Coast Line in a position to obtain, by increased solicitation, rearrangement of train service, or otherwise, a substantial portion of the overhead traffic which now moves over the line of the intervener. In response to a query as to why the intervener is interested in having the interchange established at Bladen rather than at Jacksonville, in view of the fact that the intervener would not participate in traffic interchange at either of these junctions, the witness expressed the view that service through Bladen would not be superior to that through Vidalia, but that the Jacksonville route would be a faster route.

It is obvious that the intervener's sole interest in this proceeding lies in preventing the establishment of a route superior to its own route through Vidalia. While the intervener might be hurt financially by the establishment of Jacksonville as the interchange point on this traffic, the rights of the public to the best available service are superior to those of a carrier providing inferior service.

Movement through Bladen.—The position of the parties is substantially the same as at the prior hearing and the evidence is in large part merely cumulative, but operating statistics are presented in greater volume and the current data are analyzed in meticulous detail. The complaint maintains, as it did at the prior hearing, that if the traffic is moved over the somewhat circuitous route through Bladen, it would be delayed to the extent that it would miss connection with the Coast Line's fast freight service out of Jacksonville in the late afternoon, and would in turn fail to arrive at Atlanta or Birmingham in time for the early morning markets at those points or for the regular rail connections for movement beyond those termini. The delay is said to result, not so much from the longer haul through Bladen, but rather from the character of the service available from Bladen to Waycross, and to delays incident to classification at, and the movement through, Waycross.

The complainant's evidence in this regard consists largely of rebuttal of evidence submitted by the defendant in an attempt by the latter to show that, if the defendant should deliver this traffic at Bladen not later than 7.45 p. m., which it has agreed to do, it would arrive at Sessoms before 11.30 p. m., the time at which it is assumed by the defendant that the last section of the fast freight from Jacksonville would leave that point. This estimate is based upon certain assumptions which do not appear justified by the evidence as a whole. These are (1) that a Coast Line train would be waiting at Bladen to pick up the south Florida traffic at the time the Seaboard clears the connection; (2) that the traffic from Bladen could be delivered to Waycross in 1 hour and 30 minutes; (3) that the train would run non-stop from Bladen to Waycross; and (4) that the normal running time

from Waycross to Sessoms is not in excess of 35 minutes.

These assumptions are based upon observations by the defendant's employees of the times of departure and arrival of the complainant's trains between Bladen and Waycross, and between the latter point and Sessoms. These observations were usually made, not at but near, the points of departure and arrival of the trains at the indicated points. One of the defendant's observers noted the approximate times the Bladen-Waycross train passed the station at Bladen and followed the train by automobile into Waycross and noted the time of arrival in the vicinity of the passenger station at Waycross. It was necessary for the observer following the train in an automobile to deviate some miles from the tracks, and consequently it was possible to observe only the approximate number of intermediate stops and the time consumed thereby. Another observer was stationed near the point in Waycross at which the Waycross-Sessoms freight trains pass the city limits in order to estimate the time of departure of those trains, and a third observer was stationed near Sessoms, the junction of the line from Thalmann with the Waycross-Sessoms line.

These observations showed that during one week the Bladen train, which often did not stop at that point, departed from or passed through Bladen at various times from 9.30 p. m. to 11.08 p. m. and the same trains arrived at Waycross from 11.54 p. m. to 2.28 a. m. The average running time was 2 hours and 14 minutes, including the time consumed in stopping and performing the necessary switching at intermediate points. The departure time of the last of two or more trains observed daily leaving Waycross for Sessoms varied from 9.10 p. m. to 9.22 p. m., and the time of arrival at the point of observation in Sessoms varied from 9.48 p. m. to 9.59 p. m. The average running time from the point of observation near the western city limits in Waycross to the point of observation in Sessoms was 38 minutes. These observations do not include the time consumed in yarding the Bladen train at Waycross, switching the cars destined for further movement, and movement of the trains through Waycross.

Yard situation at Waycross.—From an operating standpoint, Waycross is one of the Coast Line's more important terminals, and it is at the same time one where the merging of traffic over the six lines into and out of the terminal is fraught with more than usual difficulty. A line to Montgomery, Ala., bisects the city, and on this line the t acks serving the passenger station are in the approximate center of the corporate area. The line from Brunswick enters the corporate limits about 2.5 miles east of the line to Montgomery, which it intersects at a point a short distance north of the passenger station. On reaching the main line, trains from Brunswick or Bladen proceed southwesterly approximately 1 mile to reach the main freight classification yard which parallels the main line and extends to a point near the corporate limits in the southwestern sector of the city. The line from Jacksonville enters the corporate area from the southeast at a point about 1.5 miles from the main line, which it intersects just north of the northern extremity of the classification yard.

From approximately the same point near the entrance to the classification yard, the line to Sessoms proceeds in a general northerly direction to the corporate limits, about 3.5 miles. About midway between the freight yards and the corporate limits, the line to Albany, Ga., branches off from the Sessoms line in a westerly direction.

Trains from both Jacksonville and Brunswick thus turn southward on reaching the main Montgomery line and head into the classification yards from a northerly direction, the distance from the corporate limits to the entrance to the classification yards being about 1.5 miles on the Jacksonville line and about 3.5 miles on the Brunswick line, and from the classification yards to the corporate limits on the Sessoms line, about 3.5 miles. Due to the exigencies of switching operations, however, the yards limits, that is, the area within which switching engines operate, are not coterminous with either the classification yards or the corporate limits. Yard-limit boards are established about 1.2 miles from the entrance to the classification yards on the Jacksonville line, 1.7 miles on the Brunswick line, and about

3.5 miles on the Sessoms line. Within the yard limits, yard operating rules apply, and main-line trains must be operated at such speeds as will enable the engineer to bring his train to a complete stop within half the distance at which clear vision of the track is possible. Yard speeds cannot be greatly exceeded in the urban area, however. Due to the nature of the terrain and building conformation, higher speeds are permissible on the Jacksonville line than on either the Brunswick or the Sessoms line.

The complainant insists that no reliable schedule of operation could be based upon an estimated running time of 1 hour and 30 minutes from Bladen to Waycross, contending that the best operating time that could be made by a loaded train running non-stop from Bladen to Waycross would be at least 1 hour and 45 minutes. This contention is given support by the fact that the shortest elapsed time reported by the defendant's observers was 1 hour and 45 minutes, these observations having been made of a train which passed Bladen at full speed and made no intermediate stops. The elapsed time of the train, as reported by the observers, generally exceeded 2 hours, and, as previously stated, averaged 2 hours and 14 minutes. This average corresponds closely with the estimate of 2 hours and 15 minutes offered by the complainant at the prior hearing. The complainant points out that the running time recorded by the defendant's observers was of trains which in many instances did not stop at Bladen, and it is estimated that the time required to stop a train of 65 to 125 cars, switch out the cars to be interchanged, and again get the train in motion would consume at least 30 minutes, which would result in a departure time at Bladen not earlier than 8.15 p. m. Using the shortest possible running time, the Bladen train could not reach Waycross earlier than 10.00 p. m., and at the average actual running time the arrival would be about 10.30 p. m. The latest departure time of any of the Waycross-Sessoms trains shown by the defendant's observers is 9.22 p. m., and that check was made at a point over 3 miles from the freight yards in Waycross.

It is urged by the complainant that it would not be possible to operate the Bladen-Waycross train non-stop, carrying the cars intended for intermediate destinations into Waycross and returning them the following day, as was suggested by the defendant, since that expedient, in addition to the haul of 50 to 60 miles, would require additional switching of the cars at Waycross and would overburden the Waycross-Bladen train on the following day. There are seven industries on the Coast Line's rails between Bladen and Waycross, and many empty cars are moved to these industries on the westbound Bladen train. The carrying of these empties into Waycross and returning them the following day would deprive the industries of the use of the cars for one day. At Nahunta, Ga., about 17 miles east of Bladen, traffic is interchanged with the Jacksonville-Savannah line of the complainant, and it is obvious that the carrying of this traffic into Waycross would seriously delay its movement. Even if the train were operated non-stop, however, it appears clear that it would not ordinarily make connections with the last Jacksonville-Sessoms train at Waycross.

The defendant suggests that it would be possible to schedule the last of the fast night trains out of Waycross for Sessoms at a later hour, pointing out that a schedule book issued for solicitation purposes by certain other railroads, for which the complainant disclaimed any responsibility, showed the running time of the fast freight service from Waycross to Sessoms as 35 minutes. It is argued that, deducting 35 minutes from the assumed leaving time of the last train from Sessoms, 11.30 p. m., would permit the holding of this train at Waycross until 10.55 p. m. The complainant insists that the usual running time of the fast freight trains from Waycross to Sessoms is from 53 to 55 minutes, pointing out that the average time of 38 minutes arrived at by the defendant's observers was based upon observations made at the Waycross city limits, about 3.5 miles north of the classification yards. The departure time of 11.30 p. m. from Sessoms, assumed by the defendant, is also disputed by the complainant, and it is pointed out

that, according to the defendant's observers, the Thalmann train was generally in the Sessoms yard and the Waycross train had cleared that point before 11 p. m., which is the deadline for that train to clear Sessoms, according to the evidence offered by the complainant at the prior hearing.

It is pointed out also that the observations of the arrival of the Bladen train at Waycross were made at or near the passenger station, about a mile north of the entrance to the classification yards, and the complainant urges that, after reaching the yards, classification and switching of the cars would normally consume from 30 minutes to 1 hour. The defendant insists that little time should be required to remove the Seaboard traffic from the Bladen train and attach it to the Jacksonville-Sessoms train. This point might be conceded if it were assumed that the Seaboard traffic is all destined to the same point and that the Bladen train would not also have other traffic to move through Sessoms. Neither of these assumptions could safely be made, since it is clear that some of the south Florida traffic, as well as traffic through Bladen from other origins, would be consigned to various destinations other than Atlanta and Birmingham. It appears clear, from the evidence adduced at the further hearing, that if the south Florida traffic is interchanged at Bladen at the time proposed by the defendant, it could not normally be transported to Waycross in time to connect with the fast Jacksonville freight service, as now scheduled, and that such failure to meet these schedules would inevitably result in poorer and less satisfactory service to the shipping public than could be maintained with interchange at Jacksonville.

Movement through Jacksonville.—The complainant on further hearing reiterated its former contention that Jacksonville is the practical and logical interchange point for this traffic, since it would there be placed on through fast freight trains and move over double-track lines without the necessity for further classification or switching at intermediate junctions. The defendant's claim that it would be put to much needless expense in moving the traffic into Jacksonville, the complainant urges, is untenable, since the

defendant's own evidence indicates that the Seaboard operates two trains from the South into Baldwin, Fla., daily, which, after short delays ranging generally from 30 minutes to 1 hour, continue into Jacksonville, arriving at that point generally between 11 a. m. and 2 p. m. The complainant, over the objections of the defendant and the intervener, submitted an exhibit showing the approximate time of arrival and departure, over a period of about 8 days from February 17 to February 24, 1953, inclusive, of numerous Seaboard trains at Baldwin and the arrival of two of these trains at Jacksonville.

The defendant was granted an adjournment of the hearing for one week to obtain data showing the actual time of arrival and departure of these trains, as well as the arrival and departure of all other trains at Baldwin for the same period. The defendant's data show that the earlier of trains Nos. 80 and 88, the two trains which continue into Jacksonville, arrived at Baldwin from 9.20 a. m. to 12.05 p. m., and that the later of the two trains arrived at Baldwin from 10 a. m. to 12.45 p. m., departed from Baldwin from 10.30 a.m. to about 1.20 p.m., and arrived at Jacksonville from 11.15 a. m. to 1.50 p. m. Except on one day, which was a holiday, the later train arrived not earlier than 11.25 a. m., departed from Baldwin not earlier than 11.35 a. m. and arrived at Jacksonville not earlier than 12.05 p. m. nor later than 1.50 p. m. In every instance, except one, either train No. 80 or train No. 88 was the last train arriving in Baldwin from the South bearing perishables, and the record does not indicate that in the one instance the later train carried any perishables for Thalmann.

An appendix hereto shows the times of arrival, of all trains from the South into Baldwin and the total number of cars and the carloads of perishables on each train. It is indicated by the defendant that, on every day during this period except one, from 1 to 4 carloads of perishables were transported by the Seaboard from Baldwin to Thalmann for interchange with the Coast Line. On this record it is not possible to determine what time these cars of perishables destined for further movement over the Coast Line arrived

at Baldwin. The evidence as epitomized in the appendix, however, shows that while a few cars of perishables sometimes arrive at Baldwin as early as about 3 a. m., the perishables do not usually begin to arrive in volume until after 6 a. m., and that trains carrying a heavy tonnage of perishables usually arrive between 8 a. m. and 11 a. m. Train No. 80, the first of the Jacksonville trains, usually carries substantial amounts of perishables during the peak season, and occasionally train No. 88 carries perishables also. One of these trains originates on the east coast and the other on the west coast, but their routes merge south of Wildwood, Fla., at which point much of the re-icing is done in order to avoid delays at Baldwin.

The defendant states that, due to the heavy congestion in the Baldwin yard, especially during the peak of the perishable movement, it is often necessary to lay out entire trains and hold them some hours before the switching crews can get at the work of breaking up the trains and classifying the individual loads for further movement. Attention is first given to trains carrying perishables, but the defendant insists that it would be impossible to segregate the relatively few cars of perishables to be interchanged to the Coast Line before the departure of the last train for Jacksonville. These perishables are classified and re-iced, where necessary, along with other perishables, but the Thalmann traffic is usally placed in the latest train leaving Baldwin for the north.

The Baldwin yard.—Baldwin is at the intersection of the Seaboard's east-west line between Jacksonville and Tallahassee, Fla., and the main-south line, which insofar as through freight traffic is concerned by-passes Jacksonville. The Tallahassee line carries a large volume of traffic to and from Columbus, Ga., and Montgomery. The Baldwin yard has a total capacity of about 1,600 cars, and, excluding the tracks devoted to the icing, cleaning, and repair of cars, has a working capacity of 1,298 cars. The capacity of the receiving and dispatching tracks is 703 cars. During the period from February 17 to February 24, 1953, inclusive, the number of all freight trains arriving at

Baldwin from all directions ranged from 19 to 28, and averaged about 22 daily, while the departing trains ranged from 20 to 26, and averaged about 23. The number of cars inbound ranged from 1,055 to 1,796, and averaged 1,426, and those outbound ranged from 1,338 to 1,591, averaging 1,449 cars daily. In each of the eight days, except three, the number of inbound cars received during a 24-hour period exceeded the total capacity of all tracks available for the handling of such cars, and the averages for the entire period of the inbound and outbound cars each exceeded the total capacity of the yard and was about twice the capacity of the receiving and dispatching tracks. An analysis of the train arrivals and departures and their consists during the eight-day period indicates that during most of this period the number of cars in the yard was near the capacity of the yard and that the number of cars on hand frequently exceeded the capacity of the classification tracks, necessitating the temporary storage of trains until the classification and dispatching tracks could be cleared. The defendant argues that this condition precludes specialized handling of Coast Line perishable traffic in order to insure its placement with one of the Jacksonville trains within an hour or two after its arrival at Baldwin.

It is urged by the defendant that the large volume of perishables moved out of Baldwin daily for various northern junctions necessitates giving that traffic preference, and it is pointed out that, as presently handled, the Coast Line traffic presents no problem, since the Thalmann deadline can be made on a train leaving Baldwin as late as 6 p. m. The defendant's exhibits, however, show that during January and February 1953 that train usually left Baldwin not much later than 4 p. m. It is stated that the Jacksonville trains, Nos. 80 and 88, usually do not leave Jacksonville with the same cars that the trains bearing those numbers had on arrival, the engine and caboose being detached from the trains upon their arrival at Baldwin and reattached to trains which previously have been made up and are ready for immediate departure. It is thus

shown that these trains sometimes leave Baldwin for Jacksonville within 25 minutes after their arrival, and it is urged that this would not permit the switching of cars arriving in these trains, especially if they contain perishables which must be re-iced. There is no showing, however, that either of these trains usually carries perishables for delivery to the Coast Line. The defendant's exhibits show that, during the months of January 1952, and January and February 1953, there were 37 days in which no interchange of perishables at Thalmann was made, and that the number of cars of perishables delivered daily during these three months ranged from 1 to 4. During February 1952, the maximum number of cars of perishables interchanged at Thalmann in one day was 5; in March of that year, the maximum number was 7; in April, 4; and in May, 4. Generally, during the peak shipping season the perishables from the South routed over the Coast Line range from 1 to 4 cars, and average somewhat less than two cars daily. The defendant has not shown that any of these perishables arrive at Baldwin too late for re-icing, where necessary, and switching and forwarding on one of the Jacksonville trains.

The record indicates that train No. 80 usually arrives in Baldwin at least 1 hour and 30 minutes prior to the departure of train No. 88. Train 88, which is generally the last train to arrive in Baldwin, does not usually carry many perishable loads. Even if that train should arrive with one or two cars of perishables for interchange to the Coast Line, it would appear feasible to detach those cars when the engine and caboose are switched to the outgoing train and place them upon that train. Moreover, since the defendant has stated that certain of the perishables are re-iced at Wildwood, and the classification of perishables is also frequently made at that point in order to avoid the necessity of performing this work after arrival at Baldwin, it seems reasonable to assume that if one of the Jacksonville trains arrived at Wildwood with one or more cars of perishables for the Coast Line, these cars could be re-iced and placed either next to the engine or the caboose

so that no additional switching would be required upon arrival at Baldwin in order to assign these cars to the next outgoing train for Jacksonville.

It is not contended by the defendant that the acceptance at Jacksonville of non-perishable traffic destined for or beyond the former A. B. & C. lines would offer any operating difficulties, since there would be no penalty for delivery at Jacksonville after the deadline set for acceptance of the perishable traffic. The defendant insists, however, that it has a responsibility for prompt delivery of this traffic in order to maintain its reputation for satisfactory service. There is no evidence that such traffic would not make equally as fast time in transit through Jacksonville as through Bladen. In fact, the evidence justifies the contrary conclusion, that better time would usually be made with interchange at Jacksonville. The record is not entirely clear as to the exact volume of such traffic. The complainant shows that, in 1950, the total northbound traffic interchanged at Thalmann was 6,118 cars; in 1951, 5,400 cars; and in 1952, 3,932 cars, while the southbound traffic in those years amounted, respectively, to 3,703, 3,537, and 3,383 cars. Of the total 1952 traffic of 7,315 cars, the complainant estimates that approximately 2,500 cars consisted of traffic of the character which it now seeks to have interchanged at Jacksonville. The bulk of the northbound traffic consists of citrus fruit, of which 220 cars moved in 1952, and of phosphate rock, of which the movement for the years 1950, 1951, and 1952 amounted to 1,539, 777, and 655 cars, respectively. The record does not disclose how much, if any, moved to points other than those on the former A. B. & C. lines.

The defendant shows the traffic delivered to the Coast Line and received by it from that carrier at Thalmann for the months of January, April, July, and October 1952, with a separation between the traffic which the complainant desires to interchange at Jacksonville and the so-called Brunswick traffic, the latter category including all traffic as to which it is agreed that the new interchange point should be Bladen. For those months the traffic destined

to the former A. B. & C. lines amounted to 296 cars, and that received from those lines consisted of 285 cars, or 12.2 and 11.7 percent, respectively, of all traffic interchanged at Thalmann. It appears obvious, therefore, that the non-perishable traffic which the Seaboard would offer to the Coast Line at Jacksonville daily would not generally average more than four or five cars. The exhibits offered by the Seaboard show that it runs from five to nine trains daily from Baldwin to Jacksonville, including trains Nos. 80 and 88. About half of these trains originate west of Baldwin and the remainder come from the South, but it is obvious that all would be equally available for the handling of non-perishable traffic from Baldwin to Jacksonville. Generally, not to exceed two of these trains are run between 6 p. m. and midnight and the remainder, exclusive of trains Nos. 80 and 88, between midnight and 8 a. m. The southbound traffic involved herein, interchanged presently at Thalmann, amounts to only about 12 percent of the total southbound and eastbound traffic interchanged to the Seaboard at that point, and in the order of its importance consists of lumber, cement, coal, miscellaneous hardware, machinery, chemicals, and foodstuffs. There is very little perishable movement southbound from Thalmann, and the defendant does not allege that there would be unusual delays or other difficulties in the interchange of southbound traffic at Jacksonville. It appears that trains operated from Jacksonville to Baldwin are timed to connect with service out of Baldwin to the South or West.

The Jacksonville yard operation.—The defendant insists that, even if traffic from the South destined for the Coast Line were moved into Jacksonville on either train No. 80 or No. 88, it could not be delivered to the Coast Line in time to make the 4 p. m. deadline without the daily performance by the Seaboard of an extra switching delivery to the Coast Line; and that, in addition to the expense of the extra delivery, it would complicate and unduly delay the Seaboard's normal switching operations in the Jacksonville yard. The defendant shows that during the period from about 12.30 p. m. to 4.30 p. m., daily, there are

assembled in the Jacksonville yard five competitive trains, two of which are run northbound from Jacksonville and three westbound to Baldwin for further movement to the South and West. It is urged that no additional switching could be performed during the time these trains are being made up without seriously delaying their departure. It is stated that one of these trains, which ordinarily departs from Jacksonville to the North during the period 3.50 p. m. to 4.30 p. m., crosses the south end of the Coast Line's yards, and that a switching delivery made to meet the desired 4 p. m. deadline in the Coast Line yards would interfere with its movement. That train, however, ordinarily departs after the delivery of the Coast Line traffic would have been completed. It is contended also that an additional switching delivery to the Coast Line during the afternoon would seriously delay the departure of other important trains.

The complainant denies that there is unusual congestion in the Jacksonville yards and points out that, while the defendant contended at the original hearing herein that the Jacksonville yard was highly congested during the 1951 period of operations there shown, the amount of traffic interchanged between these lines at Jacksonville during 1952 greatly exceeded the amount shown at the prior hearing as having been interchanged in 1951, indicating that there was no congestion which could not be overcome when the need arose. The complainant shows also that, during the months of November and December 1952 and January and February 1953, 46 extra deliveries were made by the Seaboard to the Coast Line yards. The defendant, by a similar exhibit of its own, filed later, confirmed these extra deliveries and explained the reasons for them. In some instances they were made for the purpose of delivering perishables, in others at the request of shippers, in some to interchange cars of express traffic, and in numerous instances to relieve congestion in the yard.

The fact that some of the extra switching was done for competitive reasons does not appear to justify the refusal of the defendant to make necessary deliveries of traffic in

which the defendant has no competitive interest. Nor do the reasons assigned for performing the extra switching appear important. The significant fact is that when it appeared expedient, the Seaboard found it practicable to do the switching. Many of the extra trips to the Coast Line yard were made during the period from 10 a. m. to about 4 p. m., and it would appear that, in most of these instances, the traffic here in issue could have been interchanged at approximately the same times. In the prior report, the division said, at page 674:

> Although some rearrangement of train schedules and switching operations might be necessary in order to make the 4 p. m. deadline, the evidence herein is not convincing that it would be necessary for the Seaboard to increase its present train service between Baldwin and Jacksonville in order to handle the moderate increase in traffic resulting from a shift of the interchange point as proposed by the Coast Line from Thalmann to Jacksonville.

The evidence as amplified at the further hearing warrants a like conclusion.

There is at the present time a substantial amount of traffic interchanged by the parties at Jacksonville. The defendant shows that, during the period from November 1, 1952 to February 23, 1953, the Seaboard delivered to the Coast Line at Jacksonville 4,594 cars, of which 3,260 were empties, 182 were loads of perishables, and 1,152 non-perishables. At the same time, the Coast Line delivered to the Seaboard 5,019 cars, of which 1,990 were empties and 3,029 non-perishables. Of the total of 4,363 loads interchanged during the stated period at Jacksonville, 3,116 originated or terminated at that point and 1,247 originated or were destined beyond. The evidence warrants the conclusion that additonal interchange facilities at Jacksonville would not be required to handle the amount of additional traffic which would flow through Jacksonville if the interchange for the traffic in issue were shifted from Thalmann to Jacksonville.

Callahan as an interchange point.—At the further hearing, the parties presented conflicting evidence as to the propriety or impropriety of interchanging this traffic at Callahan. Callahan is on the defendant's main line about 20 miles north of Baldwin and at the intersection of that line with the complainant's main line from Jacksonville to Waycross. The distance from the northern extremity of the Moncrief yard, the complainant's main freight yard serving Jacksonville, to Callahan is about 16 miles. Thus, the establishment of interchange at Callahan rather than at Jacksonville for traffic between Seaboard points in south Florida and the complainant's western division would shorten the haul from Baldwin to Waycross about 17 miles, while the movement through Callahan would be about 40 miles shorter than through Bladen. The practicability of establishing the interchange point at Callahan was explored at the prior hearing in 1952, at which time both parties expressed the view that due to adverse physical conditions the interchange of this traffic at Callahan is neither practical nor desirable. The Coast Line approaches the Seaboard crossing at Callahan from each direction on a curve, and the approach from the east is under an over-passing highway. The main-line tracks cross at oblique angles and the team tracks and interchange track used jointly by the two carriers for the limited interchange now performed at that point lie in the obtuse angle forming the northeastern quadrant. The buildings forming the business and residential section of the village abut closely upon the main tracks and sidings, leaving little space there for the construction of additional interchange tracks.

The complainant at the further hearing expressed the view that, while Jacksonville would be preferable as an interchange point since ample facilities presently exist at that point for interchange of the traffic, it would be entirely feasible to construct suitable interchange facilities at Callahan. By an exhibit in blueprint form, the complainant offers support for this conclusion by showing the additional trackage which it is estimated would be adequate to accommodate the traffic if it were interchanged at that point.

The proposed additional facilities consist principally of two new interchange tracks, each about 1,250 feet in length, and the necessary cross-over switches. The new interchange tracks would be located beyond the congested area and these tracks, instead of leading off from the Seaboard main line and following the angle formed by the carriers' main-line tracks, would lie parallel with the present Coast Line passing track, which presently parallels that carrier's main line and connects at its westerly end with the interchange and team tracks. The complainant states that the interchange track, which presently connects at its northerly end with the team track and also has a lead-in from the Seaboard main line, could be connected by a new lead-in switch directly with the Seaboard main line a short distance north of the main-line intersection, thus converting the present interchange track into an extension of the Coast Line passing track and making it possible to reach that track and the new interchange tracks without disturbing any cars that may be on the team tracks. The complainant estimates that the proposed new track installations would cost about $21,000.

The defendant, on the other hand, insists that interchange at Callahan, in addition to being subject to the same objections as the proposed interchange at Jacksonville, is also objectionable because of the previously-mentioned physical conditions, which are detailed at length in the evidence adduced at the further hearing. The defendant's representatives refused to express a preference between Jacksonville and Callahan, stating that they are equally objectionable as a point of interchange for this traffic. The only traffic presently interchanged at Callahan consists of a few cars each week of pulpboard and waste wood originating at points on the Coast Line and destined to points on the Seaboard south of Brunswick. The empty cars are returned to the originating line at Callahan.

A congested Federal highway crosses the main line of the Seaboard at grade about 1,700 feet north of the intersection of the Coast Line and the Seaboard main lines and about 175 feet north of the switch leading from the Seaboard

main line into the team track and interchange tracks. This grade crossing is controlled by automatic crossing gates which are closed when a train or locomotive approaches within 400 feet of the grade crossing. A train of 29 cars or more, stopped for the purpose of picking up or setting out cars on the present interchange track, would block both the Coast Line main line and the highway crossing. An engineer of the Road Department of the State of Florida appeared at the behest of the defendant and testified that serious traffic congestion occurs on U. S. Federal Highway No. 1 when Seaboard trains block the crossing over that highway for more than a few minutes. The average movement of vehicles over the highway crossing during the peak movement is more than eight per minute, and during 1952 averaged 6,380 vehicles for each 24-hour period in normal traffic and 7,520 vehicles during peak traffic. The average daily count for an eight-hour period from 10 a. m. to 6 p. m. was 3,100 vehicles. Traffic has increased about 70 percent since 1949. The crossing gates, having once been actuated, remain closed for at least two minutes, resulting in an average delay to some 21 vehicles of about 3.5 minutes. The amount of the delay is cumulative, a 5-minute block resulting in an average delay of 11 minutes, while blocking of the crossing for 10 minutes would delay approximately 70 cars for periods ranging from 1 minute to 21 minutes.

The defendant estimates that the changes in the electrical signaling equipment which would be necessitated by the proposed changes in interchange and storage tracks at Callahan would cost about $67,000. It states further that the interchange of the estimated volume of the south Florida traffic would require the construction of a storage track for trains held while the switching is being performed, and it was estimated that the construction of a 150-car passing track and the necessary switches and other appurtenances would cost about $98,000. It would appear, however, that, if the plan of the Coast Line for locating the interchange tracks alongside its passing track were adopted, the necessity for the construction of additional storage

tracks would be avoided, and Seaboard trains could reach these tracks with a minimum of delay and without blocking either the rail intersection or the highway crossing longer than the period necessary to shunt the train off the main line. The picking up or delivery of interchanged traffic by the Coast Line would be done from the opposite end of the interchange, and thus would not foul either the main-line rail intersection or the highway crossing.

The running time of the Coast Line fast freight trains from the Jacksonville yard to Callahan is about 25 minutes, and the complainant estimates that it could receive the traffic at that point at least 30 minutes later than at Jacksonville, or not later than 4.30 p. m. The defendant ordinarily handles the Thalmann traffic on its so-called short-haul train, which usually leaves Baldwin for Savannah between 2 p. m. and 6 p. m. The average running time of this train between Baldwin and Callahan is about 40 minutes. During the months of January 1952, and January and February 1953, this train arrived at Callahan later than the 4.30 p. m. deadline desired by the Coast Line a total of 60 times in 90 days. The train stopped at Callahan only four times during these three months. The defendant insists that, if interchange were required, the stopping of a long train, entering the siding, picking up or setting out the cars awaiting interchange, and returning to the main line would consume at least 30 minutes. Therefore, if a stop had been made at Callahan for the purpose of setting out or picking up traffic, the dead-line would have been missed on about half of the remaining 30 days. The defendant contends further that a delay of 30 minutes to the short-haul train would endanger connections with other carriers at junctions north of Baldwin. It states that, in any event, it could not guarantee meeting the 4.30 p. m. dead-line at Callahan since that would depend entirely upon the time at which the perishables arriving at Baldwin could be switched, iced, and assembled for outbound movement.

It has been the defendant's custom to handle the perishables for Thalmann on the last train leaving Baldwin for

the North, but the record indicates that generally additional trains carrying perishables for the North are dispatched from Baldwin between 1 p. m. and 3.30 p. m. It appears, therefore, that the limited volume of the Coast Line perishable traffic could be delivered at Callahan by the desired 4.30 p. m. deadline. In the circumstances, however, the conclusion is warranted that, while it would be feasible to arrange for interchange of the traffic at Callahan, that point is less suitable than Jacksonville for the interchange of this traffic. The defendant indicates agreement with this finding.

Other contentions of the defendant.—The defendant insists that the relatively small amount of traffic now interchanged at Thalmann is not the only traffic involved in the controversy, and argues that, if interchange should be established at Jacksonville instead of Thalmann, much traffic now moving through other junctions might be attracted to the Coast Line route. That argument as above stated, was also advanced by the intervener as the principal reason why interchange through Jacksonville should not be required. In addition to traffic over the Macon, Dublin & Savannah route via Savannah and Vidalia, the Seaboard now handles traffic to Atlanta, Birmingham, and beyond over routes through Everett, Ga., Savannah, Columbus, and Montgomery. To Atlanta and Birmingham those routes are somewhat longer than the Seaboard-Coast Line route through either Jacksonville or Thalmann, but while the time in transit is not shown, they presumably are satisfactory for the handling of perishable traffic, since the Thalmann route has not attracted a large amount of Seaboard traffic.

The defendant shows that the total tonnage delivered to or received from the Coast Line at Thalmann amounted to only about 4 percent of the aggregate tonnage interchanged by the Seaboard at all of the junctions, including Thalmann. Only at Everett was a smaller amount interchanged. The approximate percentages of the total tonnage interchanged at the other junctions were: At Savannah, 11 percent; Columbus, 18 percent; Montgomery, 29 percent; and Vidalia, 34 percent. The approximate percentages of the total accruing to the defendant from traffic interchanged

at these junctions were: At Everett, 1.6 percent; Thalmann, 2.7 percent; Savannah, 10.1 percent; Columbus, 18.2 percent; Vidalia, 33.4 percent; and Montgomery, 34.1 percent. The revenue accruing to the defendant from traffic interchanged at these six junctions amounted to about 25 percent of all Seaboard freight revenue for that year. The defendant fears that if a more efficient service should be offered through Jacksonville, traffic from the other routes would be attracted to the Coast Line route and diverted from the routes through other junctions.

General discussion and conclusions.—The complainant, while admitting that it desires to attract as much traffic as possible to its line, points out that the same schedules would be observed through Jacksonville as are presently maintained through Thalmann, and it does not anticipate a greatly increased volume of traffic through the Jacksonville gateway. It is emphasized also that traffic from and to points on its system other than the former A. B. & C. lines is presently interchanged at Jacksonville. According to one of the defendant's exhibits, during a four-month period in 1952 and 1953 the parties interchanged at Jacksonville numerous shipments of various commodities between Seaboard's south Florida stations and points on connecting carriers north or west of the Coast Line termini. This traffic included perishables and other traffic from Seaboard points to the North and West, and canned milk from Tennessee, fertilizer from New Mexico, Ohio, and West Virginia, furnaces and other machinery from California, Ohio, and Pennsylvania, gasoline from Oklahoma, and lumber and lumber products from British Columbia, Oregon, and Minnesota to Seaboard points. The record is silent as to the routing of this traffic beyond the Coast Line termini, but it appears obvious that most, if not all, of it was received by the Coast Line or delivered to connections at Atlanta, Birmingham, or Montgomery. The record indicates that no through rates are in effect to or from points on the Seaboard on traffic received or delivered by the Coast Line at Montgomery.

The revenue data offered by the defendant are not conclusive, since it is not shown what proportions of the traffic considered would be susceptible of diversion to the Coast Line route, and also there is no indication that the revenue earned when traffic moves via the other junctions is greater than would accrue to the Seaboard on the same traffic interchanged at Jacksonville. The division of revenue through Thalmann, which would also be observed on interchange through Jacksonville or Callahan, is the same as that through Savannah, but the earnings received at the other junctions are not of record. Each of the parties fears that the other, by compelling interchange of the traffic at a point more favorable to it, might gain a competitive advantage. There is no convincing evidence that a shifting of the interchange point from Thalmann to Jacksonville would materially change the competitive picture. We are not, however, concerned only with this question, but more importantly with the fixing of a new interchange point in lieu of Thalmann so as to afford to the public the most efficient and economical service. It is clear that efficient service could not be established through Bladen.

In addition to the contention that interchange at either Jacksonville or Callahan is impracticable, the defendant offers three reasons which it considers justification for reversal of the prior findings. These contentions are: (1) The abandonment authority has lapsed, the case is moot, and it should therefore be dismissed; (2) the relief sought could not be granted upon the present complaint; and (3) the division was in error in treating the complaint as if it were brought under section 15 (3) of the Interstate Commerce Act. The first point need not be discussed, in view of the fact that the Commission denied the defendant's petition to reopen the abandonment proceeding and consolidate it with the instant proceeding. Points 2 and 3 present different phases of the same argument, which is, briefly, that, in prescribing Jacksonville as the interchange point, in lieu of Thalmann when that station shall have been abandoned, the division went beyond the allegations in the complaint and acted under the authority delegated to it by section

15(3) to establish through routes, which is subject to the provisions of section 15(4) to the effect that a carrier shall not be required to short-haul itself without its consent, except in stated special circumstances. The complaint sets out clearly the relief desired and the reasons therefor. It therefore was not necessary to plead explicitly the governing sections of the act. In the prior report the division observed that the defendant receives revenue based on its haul to Savannah, and said at page 675:

> Since the revenue earned by the defendant on the traffic would be the same with interchange at either Bladen or Jacksonville, we are unable to agree that requiring the defendant to interchange the northbound traffic at Jacksonville, thus relieving it of the necessity of performing an additional haul of 54 miles, would contravene the provisions of section 15(4).

It is significant that the defendant maintains through routes with numerous other carriers, through various junctions, which embrace substantially less than the entire line of the defendant's railroad between south Florida and Atlanta and Birmingham. It reaches Atlanta and Birmingham with its own rails, but there is no indication that its much longer single-line route through North Carolina moves any of the traffic thereto from Florida.

By section 15(4) we are forbidden to require any carrier, without its consent, to embrace in a through route substantially less than the entire length of its line between the termini of such through route, unless the carrier's own line is unreasonably long or the route proposed is needed in order to provide adequate, and more efficient or more economic, service. The defendant does not attempt to show that its own line between south Florida and Atlanta and Birmingham would not be unreasonably long as compared with the Seaboard-Coast Line route. We find that it would be unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville.

It is clear that the Seaboard-Coast Line route through Jacksonville would be substantially superior to routes

presently in use. In the prior report, the division found, at page 676:

> We think, also, that the circumstances here present may reasonably be considered as falling within exception (b) of section 15(4), since the proposed route through Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation.

That finding is fully warranted by the evidence, and it is affirmed. We further find that the route through Jacksonville is necessary and desirable in the public interest.

Moreover there is here involved not merely a choice between routes embracing long portions of the Seaboard's line and another route embracing substantially less of that carrier's line, but also competition between the Coast Line's route and numerous other routes embracing lines connecting with the Seaboard, all of which embrace substantially less than the long portions of the Seaboard's line embraced in other established routes. The defendant is obligated, under section 3(4) of the act, to provide reasonable and proper facilities for the interchange of traffic at an interchange point in lieu of Thalmann, with due regard for the public interest. The record is convincing that the obligation thus placed upon the carriers affected can be met only by using Jacksonville as the interchange point on the traffic described.

We conclude that interchange of the traffic described between the complainant and the defendant at Jacksonville is required to afford reasonable and proper facilities for the interchange of such traffic, in the public interest, and that provision should be made therefor at the joint rates and divisions presently in effect via Thalmann, or as such rates or divisions may be lawfully modified. An appropriate order will be entered.

APPENDIX

Trains arriving at Baldwin, Fla., from the South

Train Number	Time of Arrival	Number of cars	Perishables
February 17, 1953			
94	2 a. m.	86	
Ex 1650	3.10 a. m.	27	2
Ex 1761	7.50 a. m.	35	
Ex 1675	8.10 a. m.	80	45
80	10 a. m.	73	15
Ex 1638	10.30 a. m.	69	17
88	11.25 a. m.	69	
76	10.30 p. m.	73	
February 18, 1953			
94	2.45 a. m.	86	
Ex 1638	4.45 a. m.	37	5
Ex 1761	7.50 a. m.	36	
Ex 1676	8.15 a. m.	86	66
Ex 1673	10.15 a. m.	67	17
80	11.15 a. m.	85	16
88	11.45 a. m.	84	3
Ex 4503	11 p. m.	100	
February 19, 1953			
94	1.55 a. m.	81	
Ex 1658	7 a. m.	61	6
Ex 1742	7.45 a. m.	25	
Ex 1667	8.10 a. m.	82	20
Ex 1677	9.05 a. m.	52	23
Ex 1638	9.50 a. m.	39	10
80	11.50 a. m.	86	29
88	12.30 a. m.	75	
February 20, 1953			
76	4 a. m.	148	
94	6.05 a. m.	99	
Ex 1656	7.30 a. m.	41	4
Ex 1638	9.20 a. m.	85	23
Ex 1676	9.50 a. m.	28	11
Ex 1673	10 a. m.	66	10
80	12.05 p. m.	86	39
88	12.45 p. m.	68	
Ex 1763	1.10 p. m.	83	

Train Number	Time of Arrival	Number of cars	Perishables
February 21, 1953			
76	1.15 a. m.	112	
94	4.10 a. m.	115	
Ex 1638	6.15 a. m.	53	10
Ex 1651	8.55 a. m.	86	73
80	9.30 a. m.	86	46
Ex 1675	10.30 a. m.	64	36
Ex 1742	11.10 a. m.	75	
88	12.30 p. m.	73	14
Ex 1650	4 p. m.	51	
February 22, 1953			
76	2.30 a.m.	133	
94	3.30 a.m.	78	
Ex 1638	3.55 a.m.	11	3
Ex 1721	8.40 a.m.	69	
Ex 1679	10.20 a.m.	85	61
80	10.30 a.m.	86	35
88	11.30 a.m.	74	8
Ex 1656	12.50 p.m.	65	36
76	9.30 p.m.	68	
February 23, 1953			
88	9.20 a.m.	59	1
80	10 a.m.	38	7
76	9.05 p.m.	27	
February 24, 1953			
Ex 1651	3.15 a.m.	28	5
94	3.20 a.m.	98	
Ex 1822	6.45 a.m.	33	
Ex 1675	8.15 a.m.	82	40
80	10.05 a.m.	87	20
88	11.15 a.m.	86	19
Ex 1600	3.45 p.m.	5	
76	10 p.m.	58	

Appendix A-8

Order.

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 11th day of January, A. D. 1954.

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

This proceeding being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendant be, and it is hereby, notified and required to join the complainant in the establishment, on or before March 19, 1954, upon not less than 30 days' notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain, provisions for the interchange at Jacksonville, Fla., of traffic between points on the lines of the defendant south of Jacksonville, on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on

other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., or as such rates or divisions may be lawfully modified.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, division 3.

GEORGE W. LAIRD,
Secretary.

(SEAL)

Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of May, A. D. 1954.

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

Upon consideration of (1) the record in the above-entitled proceeding, (2) petition of the Seaboard Air Line Railroad Company, defendant, for reconsideration and oral argument, (3) petition of Macon, Dublin & Savannah Railroad Company, intervener, for reconsideration, and (4) the replies to the petition by complainant, Atlantic Coast Line Railroad Company; and it appearing that substantial and material reasons to warrant granting petitioners' request have not been shown:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

GEORGE W. LAIRD,
Secretary.

(SEAL)

Amended Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of May, A. D. 1954.

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

It appearing, That on September 2, 1952 the Commission, division 3, made and filed its report in the above-entitled proceeding and by order dated February 11, 1953 reopened the proceeding for further hearing:

It further appearing, That a further hearing has been held, that full consideration of the matters and things involved herein has been had, and that the division on January 11, 1954, made its report on further hearing and entered its order therein, which report and order and the prior report herein are hereby referred to and made a part hereof:

It is ordered, That the order of January 11, 1954 be, and it is hereby, vacated and set aside.

It is further ordered, That the above-named defendant be, and it is hereby, notified and required to join the complainant in the establishment, on or before August 15, 1954, upon not less than 30 days' notice to this Commission and to the general public by filing and posting in the manner

prescribed in Section 6 of the Interstate Commerce Act, and thereafter to maintain, provisions for the interchange at Jacksonville, Fla., of all traffic, now interchanged at Thalmann, Ga., between points in Florida on the lines of the defendant south of Jacksonville, Fla., on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., or such rates and divisions as may hereafter be lawfully established.

And it further ordered, That this order shall continue in full force until the further order of the Commission.

By the Commission.

GEORGE W. LAIRD,
Secretary.

(SEAL)

Order.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C. on the 30th day of July, A. D., 1954.

No. 30882

ATLANTIC COAST LINE RAILROAD COMPANY

v.

SEABOARD AIR LINE RAILROAD COMPANY

Upon further consideration of the record in the above-entitled proceeding, petition of defendant for further hearing, or for entry of an order admitting certain new matter to the record, and for reconsideration, and the reply to such petition by complainant; and it appearing that the matters submitted in said petition in support thereof do not present substantial and material reasons for granting defendant's request:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

GEORGE W. LAIRD,
Secretary.

(SEAL)

Appendix B

Statutes Involved.

The pertinent provisions of the Interstate Commerce Act applicable at the date of the Commission's order of July 30, 1954 (49 U. S. C. 3, 15 (3) and 15 (4)) are as follows:

SECTION 3 (4). All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph, the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

SECTION 15 (3). The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative, without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or

any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest without regard to the provisions of paragraph (4) of this section.

SECTION 15 (4). In establishing any such through route the Commission shall not (except as provided in section 3), and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to

meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

TENNESSEE

NORTH CAROLINA

SOUTH CAROLINA

GEORGIA

ALABAMA

FLORIDA

HAMLET

COLUMBIA

CHARLESTON

ATLANTA

BIRMINGHAM

CEN. OF GA.

MACON

L. & N.

G. M. & O.

MONTGOMERY

COLUMBUS

VIDALIA

SAVANNAH

SESSOMS

ALMA

THALMANN

EVERETT

ABANDONMENT AUTHORIZED
DECEMBER 18, 1950.

ANGUILLA

WAYCROSS

BLADEN

BRUNSWICK

CALLAHAN

CHATTAHOOCHEE

TALLAHASSEE

JACKSONVILLE

BALDWIN

HAMPTON

RIVIERA

LEGEND

- SEABOARD
- COAST LINE
- MACON, DUBLIN & SAVANNAH
- CONNECTING LINES
- SOUTHERN (AND G.S.&F.)

(TRACED FROM A MAP OF THE SOUTH-EASTERN UNITED STATES PREPARED BY THE NATIONAL GEOGRAPHIC SOCIETY. SCALE APPROXIMATELY 40 MILES TO THE INCH)

PLAN FILE
D-1112

DWG NO.
16038

FILED
MAR 9 1955
HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 584

SEABOARD AIR LINE RAILROAD COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*,
INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY, *Intervenors*.

On Appeal from the United States District Court for the Eastern District of Virginia

MOTION TO AFFIRM

R. B. GWATHMEY,
Counsel for
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenor-Appellee,
Wilmington, N. C.

Parker Printing Co., Washington, D. C.

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SEABOARD AIR LINE RAILROAD COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*,
INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY, *Intervenors*.

On Appeal from the United States District Court for the Eastern District of Virginia

---

MOTION TO AFFIRM

Atlantic Coast Line Railroad Company, intervenor-appellee, pursuant to Rule 16(1)(c), Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed on the ground that the questions presented are so unsubstantial as not to need further argument.

This is a direct appeal from a final judgment entered December 10, 1954, by a District Court of three judges

specially constituted pursuant to 28 U.S.C., Section 2284, dismissing an action brought by Seaboard Air Line Railroad Company in the District Court of the United States for the Eastern District of Virginia, Norfolk Division, to enjoin the enforcement of the order of the Interstate Commerce Commission dated July 30, 1954, issued in I.C.C. Docket No. 30882, *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company.* The decision of the three-judge Court was unanimous.

In support of its motion to affirm, Coast Line adopts as grounds for its motion those advanced in the motion filed or to be filed by the United States and the Interstate Commerce Commission, and in addition, it urges the grounds hereinafter set forth.

QUESTIONS PRESENTED

The questions presented by the appeal, as set forth in the notice of appeal, are as follows:

1.

Did the District Court err in holding that the order of the Interstate Commerce Commission of July 30, 1954, as modified by the order of said Commission of October 11, 1954, did not have the effect of establishing a new through route between the points named in said order?

2.

Did the District Court err in holding that the said order of the Commission of July 30, 1954, as modified, was authorized by and in conformity with the provisions of Section 3(4) of the Interstate Commerce Act?

3.

If said order of July 30, 1954, as modified, does have the effect of establishing a new through route between the points named in said order, was said order based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act?

4.

If said order of the Interstate Commerce Commission was based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act, were such findings supported by substantial evidence?

5.

Did the District Court err in finding that if the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 be exercised, an interchange point other than Thalmann would be necessary for the traffic here involved?

6.

Did the District Court err in finding that the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 was and is valid?

STATEMENT

For many years Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company have provided joint through interline service at joint rates on through traffic originating at points in Florida on the lines of the Seaboard south of Jacksonville destined to points on the line of the Coast Line from Waycross, Georgia, to Atlanta, Georgia and Birmingham, Alabama, and points on connecting lines beyond; and on like traffic in the reverse direction originating at points on the Coast Line from Waycross, Georgia, to Atlanta, Georgia and Birmingham, Alabama, and connecting lines beyond, destined to points in Florida on the lines of the Seaboard south of Jacksonville. This traffic has been and is interchanged between Coast Line and Seaboard at Thalmann, Georgia.

Thalmann, the present point of interchange, is located on the former Atlanta, Birmingham and Coast Railway, which extended from Brunswick, Georgia, to Atlanta and Birmingham. That railroad was absorbed by Atlantic

Coast Line Railroad Company on or about January 1, 1946. This gave Coast Line two closely parallel lines of railroad out of Brunswick, and in order to avoid duplication of service and to effect operating economies, Coast Line applied to the Interstate Commerce Commission and obtained a certificate of public convenience and necessity authorizing the abandonment of approximately 57 miles of the line of the former AB&C line between Alma, Georgia, and Anguilla, Georgia (near Brunswick). *Atlantic Coast Line Railroad Company Abandonment*, Finance Docket No. 16872, decided December 18, 1950.

Thalmann is located on the segment of track authorized to be abandoned and the exercise of the abandonment authority necessitates the substitution of another interchange point in lieu of Thalmann on the traffic interchanged at Thalmann.

The lines of the Coast Line and Seaboard in this area also connect at Jacksonville, Florida and Bladen, Georgia. Coast Line proposed that Jacksonville be substituted for Thalmann on the traffic involved. Seaboard proposed Bladen as the point of interchange to be substituted for Thalmann.

Being unable to agree, the issue was submitted to the Interstate Commerce Commission upon complaint of the Coast Line, and after extensive hearings the Commission issued its order of July 30, 1954, requiring the substitution of Jacksonville for Thalmann as the point of interchange at the joint rates and divisions in effect via Thalmann, or such rates and divisions as may be hereafter lawfully established.

The traffic involved which is interchanged at Thalmann is not large in volume. It is presently handled by Seaboard direct over its line from Baldwin to Thalmann where it is delivered to Coast Line. It is then handled by Coast Line from Thalmann through Sessoms, Georgia, for movement to Atlanta or Birmingham and points beyond.

With interchange at Jacksonville in lieu of Thalmann, the traffic would be handled by Seaboard from Baldwin

over to Jacksonville and interchanged with Coast Line at Jacksonville. It would then be handled by Coast Line through Waycross and Sessoms for movement to Atlanta or Birmingham and points beyond.

With interchange at Bladen in lieu of Thalmann, the traffic would be handled via Seaboard from Baldwin to Bladen for interchange with Coast Line at that point, and Coast Line would then handle the traffic from Bladen back through Waycross to Sessoms for movement to Atlanta or Birmingham and points beyond.

The traffic in the reverse direction would be given the same handling in reverse.

Whether interchanged at Thalmann, Jacksonville, or Bladen, the traffic would funnel through Sessoms.

Coast Line objected to the substitution of Bladen for Thalmann for the reason that it would necessitate physical handling of the traffic which would very seriously slow up and impair the existing interline service and schedules via Thalmann. It urged the use of Jacksonville for the reasons that there are already adequate interchange facilities at Jacksonville and a substantial amount of other traffic is interchanged between Coast Line and Seaboard at Jacksonville, and that interchange at Jacksonville would preserve and protect the existing through interline service and schedules now available via Thalmann. Seaboard's objection to the substitution of Jacksonville for Thalmann seems to be the fear that it might result in some improvement in the existing through interline service and might tend to divert traffic from other preferred Seaboard routes. It admits that if the amount of traffic now handled in the existing interline service would remain as it now is, the substitution of Jacksonville for Thalmann as the interchange point for traffic over the Seaboard-Coast Line route would be of little practical consequence. It first objected to the substitution of Jacksonville for Thalmann on the ground that it would not be practical from an operating standpoint. On its appeal it places main stress on the theory that the substitution of Jackson-

ville for Thalmann would be tantamount to the establishment of a new through route under Section 15(3), which it contends the Commission was not empowered to do on this record.

ARGUMENT

This case involves nothing more than a simple dispute between two rail carriers over the substitution of one interchange point for another interchange point on a joint through interline service which has been maintained by these carriers for many years. It is manifest that no substantial questions are presented which call for review by the Supreme Court.

Question No. 1

The first question raised is whether the District Court erred in holding that the order of the Interstate Commerce Commission of July 30, 1954, did not have the effect of establishing a new through route as that term is used in the Interstate Commerce Act.

Both the Commission and the District Court held that, under the facts of this case, the shift of the interchange point from Thalmann to Jacksonville did not have the effect of establishing a new through route, as that term is used in the Interstate Commerce Act, and both were plainly right.

In *Thompson* v. *U.S.*, 343 U.S. 549, as pointed out by the District Court, the Supreme Court has recently dealt with and defined the meaning of the term "through route", as used in the Interstate Commerce Act. The test laid down there is "whether the participating carriers hold themselves out as affording through transportation service". The emphasis is upon through service. As pointed out by the District Court in the instant case, through transportation service between Coast Line and Seaboard has been in existence for a number of years between the points involved in the Commission's order, via Thalmann, and all that is

being done is to establish a new point of interchange in lieu of Thalmann. The only change in the through route occurs in the short segment between Baldwin, Florida, and Sessoms, Georgia. There is no expansion of the existing through interline service. The traffic involved is through overhead traffic and is not affected by the shift of the interchange point. No intermediate traffic is affected. No change is made in the existing divisions. No change is made in the joint through rates now applicable on the traffic via Thalmann. The matter involved is simply a readjustment of the interchange facilities for the continued operation of an established joint interline service between Coast Line and Seaboard. The essential features of the old established through route still prevail.

The sole effect is that when the shipper elects to employ the available interline service between Seaboard and Coast Line on through traffic originated on the Seaboard south of Jacksonville destined to points on the Coast Line between Sessoms and Atlanta and Birmingham and points beyond, and traffic in the reverse direction, the traffic will be interchanged between Seaboard and Coast Line at Jacksonville instead of at Thalmann.

The minor shift of the interchange point has been held by the Commission to be reasonable.

Question No. 2

The second question presented is whether the District Court erred in holding that the Commission's order was authorized by and in conformity with the provisions of Section 3(4) of the Interstate Commerce Act.

We are here dealing with a through interline service which has been in effect between Seaboard and Coast Line for many years. Neither party has attempted to withdraw from that service. The preservation of that service necessitates the selection of another interchange point.

A mass of testimony was taken before the Commission to show the relative reasonableness of substituting Jack-

sonville or Bladen as the point of interchange in lieu of Thalmann. As pointed out by the District Court, the Commission, after weighing all possible advantages and disadvantages which might accrue at the various points, concluded that the service which would be afforded the traffic involved over new interchange facilities at Bladen would be less adequate, less efficient, and less economic than that which could be furnished over existing interchange facilities at Jacksonville. In such situation the Commission is plainly empowered to enforce the duty imposed by Section 3(4) that carriers "shall afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines". The District Court, on the record presented, very properly upheld the Commission's action.

Questions Nos. 3 and 4

Questions 3 and 4 raise the questions whether, assuming the Commission's order has the effect of establishing a new through route, the order is based upon the findings prescribed by Section 15(4), and such findings are supported by substantial evidence.

These questions are dealt with so effectively by the District Court that little else need be said.

It is, of course, settled that it is only where the Commission acts under Section 15(3) to establish a new through route that the short-haul provisions of Section 15(4) have any application. *U.S.* v. *Great Northern Railway*, 343 U.S. 562.

There is serious doubt whether this case really presents any question of shorthauling of Seaboard. With interchange at Thalmann, the Seaboard's distance from Baldwin to Thalmann is approximately 74 miles. The shift of the interchange point from Thalmann to Jacksonville would reduce Seaboard's distance to 18 miles, the distance between Baldwin and Jacksonville. But the Commission's order makes no change in existing divisions and Seaboard will continue to receive the same revenues with inter-

change at Jacksonville as it now receives with interchange at Thalmann. It is thus seen that Seaboard's plea of Section 15(4) is, at most, purely technical in that Seaboard is in nowise prejudiced from the standpoint of Section 15(4) by the Commission's order.

Nevertheless, as pointed out by the Court, the Commission went ahead and made the necessary findings under exceptions (a) and (b) of Section 15(4). As to exception (a), it stated:

> "The defendant does not attempt to show that its own line between south Florida and Atlanta and Birmingham would not be unreasonably long as compared with the Seaboard-Coast Line route. We find that it would be unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville."

As to exception (b), it reaffirmed its earlier finding:

> "We think, also, that the circumstances here present may reasonably be considered as falling within exception (b) of Section 15(4) since the proposed route through Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation."

The record shows that with interchange at Bladen, the traffic could not be handled over to Waycross in time to connect with the Jacksonville-Waycross-Sessoms train and would have to move forward on the next available train which leaves Waycross the following morning. That would result in a delay of at least 12 hours on all traffic, and would have the effect of a 24-hour delay on perishable traffic because of missing the scheduled morning markets at destination. Interchange at Bladen, therefore, would seriously impair the existing service and schedules now available via Thalmann. The record shows also that Bladen interchange would require an extra train which would cost $102. per day, and that even with the extra train, the existing schedules could not be met via Bladen.

At Jacksonville, there are established interchange facilities between Coast Line and Seaboard and a large volume of traffic is already interchanged between Seaboard and Coast Line at Jacksonville. Jacksonville interchange would permit the traffic to move forward beyond Sessoms in the same trains in which it now moves with interchange at Thalmann, and would preserve the existing service and schedules. Seaboard believes that it will improve the existing service and schedules. In any event, with the abandonment of the line on which Thalmann is located, the evidence of record leaves no possible doubt that interchange at Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation.

Question No. 5

Question 5 presents the question whether the District Court erred in finding that upon the exercise of the abandonment authority granted to the Coast Line to abandon the segment of line on which Thalmann is located, an interchange point other than Thalmann would be necessary on the traffic involved.

The District Court made no specific finding on this point. It did recite:

> "If this authority be exercised, an interchange point other than Thalmann would be necessary for the traffic involved."

That fact would appear to be self-evident. We have here an established through interline route between Coast Line and Seaboard with interchange at Thalmann. The route has never been cancelled and neither party has sought to cancel it. That the Commission in authorizing the abandonment of the line on which Thalmann is located did not contemplate the abandonment of the through service is evident from the Commission's report in that case in which it states:

"Applicant states that, in the event of abandonment, the overhead traffic now handled over the line would be moved in as good, if not better, service via available alternate routes." (*Atlantic Coast Line R.R. Co. Abandonment, supra.*)

Question No. 6

Question 6 raises the question whether the District Court erred in finding that the abandonment authority of the Coast Line granted in Finance Docket No. 16872 was, and is, valid.

While reference is made in this proceeding to Finance Docket No. 16872, *supra,* in which the Commission authorized the abandonment of the segment of line on which Thalmann is located, the Commission's decision in that case is not the subject of this appeal. It may not be amiss, however, to point out that that case was duly decided by the Commission after a comprehensive hearing. Upon consideration of the evidence, the Commission issued its certificate that the public convenience and necessity permitted of the abandonment of the line in question. Although the hearing was publicly advertised pursuant to the Commission's rules, no effort was made by Seaboard to intervene in the proceding prior to the close of the case. More than two years later, after the Commission had issued its first report in ICC Docket No. 30882, finding that Jacksonville should be substituted for Thalmann as the point of interchange in that case, Seaboard filed a petition under date of December 5, 1952, for leave to intervene in the abandonment case. The stated purpose of the intervention was to seek the revocation of the certificate issued in that case so as, thereby, to defeat the Commission's decision in Docket No. 30882. That petition for intervention was denied by the Commission under date of February 2, 1953.

The certificate of convenience and necessity issued by the Commission has never been revoked nor amended. In its report on further hearing dated January 11, 1954, the

Commission stated that the only matter in issue is the determination of a proper point of interchange "when the complainant shall have exercised its authority to abandon the line on which Thalmann, the present interchange point, is located", thus making it obvious that the Commission, as late as January 11, 1954, regarded the certificate as in full force and effect.

The District Court pointed out that Coast Line's authority to abandon is still valid. Plainly, there is no error in that statement.

CONCLUSION

It is plain that Questions 1-6 presented by this appeal as applied to the facts of this case, involving as it does a dispute between two carriers over a minor change in the interchange point of an established through interline service, pose no important questions of federal law. Nor does it appear that any right of the appellant is threatened. At most, appellant is fearful that if the interchange point is shifted from Thalmann to Jacksonville it may result in some improvement in service and thereby attract traffic from other preferred routes of the appellant. The decision on the questions presented will be of no national consequence. There is no conflict of decisions. It is manifest, therefore, that the questions presented by this appeal are so unsubstantial as not to need further argument in this Court.

It is manifest, also, that the decision of the court below is clearly correct.

It is respectfully submitted, therefore, that the appellant presents no substantial question for the decision of this

Court, and that the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

R. B. GWATHMEY,
Wilmington, N. C.,
Counsel for
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenor-Appellee.

March 9, 1955.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 584

SEABOARD AIR LINE RAILROAD COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, appellees United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed on the ground that the appeal presents no substantial question warranting further argument.

STATEMENT

This is a direct appeal from a final judgment, entered on November 10, 1954, by a three-judge district court convened pursuant to 28 U. S. C. 2284, 2325, dismissing a complaint which sought to set aside an order of the Interstate Commerce Commission. The Commission's order required the appellant railroad to join the Atlantic Coast Line Railroad Company ("Coast Line") in providing for the interchange at Jacksonville, Florida, of all traffic from or to points on appellant's line south of Jacksonville, on the one hand, and points on the lines of the Coast Line running from Waycross, Georgia, to Atlanta, Georgia, Birmingham, Alabama, and points beyond, on the other hand, at the joint rates and divisions presently in effect for such traffic when interchanged at Thalmann, Georgia.

Appellant's line from southern Florida points runs through Baldwin, Florida, to Savannah, Georgia, and points further north. There is a junction at Baldwin with its line from Jacksonville to Columbus, Georgia, and Montgomery, Alabama, at which points there are connecting rail lines running to Birmingham. Southern Florida-Birmingham traffic can move over this route. Southern Florida-Atlanta traffic can move over appellant's line to Savannah, then over its Savannah-Macon line,[1] and then over connecting lines

[1] Part of this line (from Vidalia to Macon) is that of a wholly owned subsidiary.

running from Macon, Georgia, to Atlanta. See Appendix C.[2]

The Coast Line has a main line running from Jacksonville to Atlanta and, via a prong, to Birmingham. The Coast Line also has a line from Brunswick, Georgia, which connects with its Jacksonville-Atlanta-Birmingham line at Waycross, Georgia, and a line from Anguilla (near Brunswick) connecting with the main Jacksonville-Atlanta-Birmingham line at a point a relatively short distance from Waycross and connecting with appellant's line to Savannah at Thalmann. See Appendix C.

Appellant and the Coast Line have long been parties to joint rates on traffic between southern Florida points on appellant's line and Atlanta, Birmingham, and points beyond these gateways, with interchange made at Thalmann. The present proceeding was brought to assure continuance of these through routes following the Coast Line's abandonment of its line running west from Anguilla. Such abandonment was authorized by the Commission in December 1950 upon a showing that this was a secondary line badly in need of rehabilitation, that continuance of service would involve substantial annual operating losses, that a rail lying to the north and another to the south made it an unnecessary duplication of railroad

[2] The words "Appendix C" refer to Appendix C of appellant's jurisdictional statement. We will similarly refer to other parts of this appendix under the designations there given, e.g., Appendix A-1, Appendix A-5. A citation such as Appendix A-1,3 refers to page 3 of Appendix A-1.

facilities, that truck transportation could serve local needs, and that there were equal or better alternative routes for the through traffic which was interchanged with appellant at Thalmann. See Appendix A-5, 2-4, 6-7, 19.

Appellant and the Coast Line were unable to agree upon the interchange point to be substituted for Thalmann, and in August 1951 the Coast Line filed a complaint asking that appellant be required to interchange at Jacksonville the through interline traffic currently interchanged at Thalmann, at the joint rates and divisions applicable via Thalmann. After full administrative hearings, Division 3 of the Commission issued a report in which it found that interchange at Jacksonville would provide more expeditious service (particularly important in the case of citrus fruit traffic), than would interchange at Bladen (on the Coast Line's Brunswick-Waycross line) as proposed by appellant. No order was entered pending appellant's implementation of the Commission's conclusions within a reasonable time. See Appendix A-4, 4-6, 10.

On appellant's petition the Commission reopened the matter for further hearing and the taking of additional evidence. Thereafter, Division 3 issued a report dealing at length with the pertinent facts and considerations (Appendix A-7, 1-28). With particular reference to the short-hauling prohibitions of Section 15(4) of the Interstate Commerce Act, the Commission affirmed its prior finding that exception (b) of the section

is applicable "since the proposed route through Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation" (*idem* 28). The order of the Commission giving effect to the findings made in its second report was unanimously affirmed by the three-judge district court in an opinion by Circuit Judge Dobie (Appendix A-1).

ARGUMENT

The Commission's order directing appellant to make provision for the interchange of certain traffic at Jacksonville is partly grounded on Section 3(4) of the Act, which requires all railroads subject to the Act to afford "all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines." The Commission found that this section obligated appellant to provide interchange facilities "at an interchange point in lieu of Thalmann." and that this obligation "can be met only by using Jacksonville as the interchange point" (Appendix A-7, 28).

The Commission, in addition to substituting Jacksonville for Thalmann as the interchange point for certain traffic, directed that "the joint rates and divisions presently in effect via Thalmann" shall apply to this traffic. This aspect of the order is directly within the Commission's power, under Section 15(3) of the Act, to establish joint rates and divisions thereof whenever it deems this to be "necessary or desirable in the public interest."

Appellant attacks the Commission's order upon

the ground that it requires appellant to establish a through route under which it would be short hauled, contrary to the prohibitions of Section 15(4). The issues thereby raised—decided adversely to appellant by both the Commission and the district court—are (1) whether the Commission established a new through route and, if so, (2) whether the Commission made findings, having adequate evidentiary support, that the case comes within one or both of the exceptions to the Section 15(4) prohibition.

1. Concededly, there has long been in existence a through route over the lines of appellant and the Coast Line for traffic moving between southern Florida points on appellant's line and the Atlanta and Birmingham gateways and points beyond. Where a through route already is in existence, exercise by the Commission of its statutory powers under other sections of the Interstate Commerce Act is not subject to the limitations or prohibitions of Section 15(4). *United States* v. *Great Northern Railway Co.*, 343 U. S. 562.

In the *Great Northern* case, this Court held that, where through service exists, the Commission's prescription of joint rates and divisions thereof, in lieu of pre-existing combination rates, did not constitute establishment of a new through route, and "Section 15(4) does not affect the Commission's power." We submit that, *a fortiori*, the order in the instant case is not the establishment of a new through route. A Commission order which, as here, merely prescribes a new interchange point for an existing

through route, preserving for each party to the route the existing joint rates and divisions thereof, clearly effects a less drastic change than substituting for separately-established combination rates Commission-prescribed joint rates and divisions thereof.

The district court, in holding that the Commission's order does not establish a new "through route" in the statutory sense, observed that, under the order, the "requisite and vitally important components of the original through route * * * will still be intact" (Appendix A-1, 8-9). The court pointed out that "the origin and destination territories and the freight rates and divisions remain the same"; that the participating carriers remain the same; that the traffic involved, being through overhead traffic, will "not be affected by the shift of the interchange point"; that no intermediate traffic will be affected; and that all that is involved is "simply a readjustment of the interchange facilities for the continued operation of an established joint interline service" (*idem* 9).

2. But assuming, *arguendo*, that the Commission's order does establish a new "through route" and that Section 15(4) is therefore applicable, its order must be sustained because, as the court below stated, "the Commission made findings, based on substantial evidence, which permit the establishment of a new 'through route' under clauses (a) and (b) of Section 15(4)" (Appendix A-1, 10).

Section 15(4) provides that the Commission, in establishing a through route, shall not require a

rail carrier, without its consent, to embrace in such route substantially less than the entire length of its railroad lying between the termini of the proposed through route—

> (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: * * *.

Since the Commission made the finding of clause (b) in *haec verba*,[3] the only issue open in this connection is whether the finding has evidentiary support. Under clause (b), the interest both of the shipping public and of the carriers involved "should be considered and a fair balance found". *Pennsylvania Railroad Co.* v. *United States*, 323 U. S. 588, 593. The reports of the Commission in the present case show that it had before it and considered abundant evidence bearing upon the advantage to shippers of the through route through Jacksonville, and of the operating problems and carrier costs incident to use of this interchange point. Without reviewing the evidence in detail, we call attention to the following evidence reflected in the Commission's reports:

Evidence as to the volume and character of the traffic moving over the through route via Thalmann

[3] The finding is quoted *supra*, p. 5.

(Appendix A-4, 6; Appendix A-7, 16-17); evidence that the nature of the terrain and building conformation permit maintenance of higher speed on the line of the Coast Line from Jacksonville than on its line from Brunswick (Appendix A-7, 9); evidence that its traffic from Jacksonville moves on fast freight trains over double-track lines and does not require classification or switching at intermediate junctions (*idem* 11); evidence showing for an 8-day period actual times of arrival at Baldwin (18 miles from Jacksonville) of appellant's freight trains from the south, with the number of carloads of perishables carried in each train (*idem* 29); the view expressed by a witness for the intervenor (a wholly-owned subsidiary of appellant) that the Jacksonville route would be faster than over appellant's line through Vidalia and Macon (*idem* 5); and evidence as to appellant's possible additional cost with interchange at Jacksonville, as against which there would be its cost saving in having a 54-mile shorter haul than with the present interchange at Thalmann (Appendix A-4, 5).

We submit, therefore, that the Commission's finding that the route through Jacksonville "would be substantially superior to routes presently in use" for the traffic in question (Appendix A-7, 27-28) has ample support in the evidence.

As to clause (a), the Commission found that appellant's line between southern Florida and Atlanta and Birmingham is "unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville" (Appendix A-7, 27).

Since Section 15(4) is not applicable if the case comes under *either* clause (a) *or* clause (b), the question of whether the clause (a) finding has evidentiary support would not appear to be of much moment. The district court said of this finding that "the most convincing evidence, though there was other testimony," in support of the finding "is a glance at the maps showing" the various routes to Atlanta and Birmingham (Appendix A-1, 11). We also note that appellant concedes that its route to Atlanta via Savannah, Vidalia, and Macon is longer than the Coast Line route thereto (Juris. Statement 13).

CONCLUSION

For the foregoing reasons, we submit that the decision below is correct, and that this appeal presents no substantial question. The judgment of the district court should accordingly be affirmed.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
CHARLES H. WESTON,
RICHARD O. MICHAEL,
Special Assistants to the Attorney General.

EDWARD M. REIDY,
General Counsel,
Interstate Commerce Commission.

MARCH, 1955.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1954

No. 584.

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee,

INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF OPPOSING MOTIONS TO AFFIRM.

JAMES B. MCDONOUGH, JR.,
Counsel for Plaintiff-Appellant, Seaboard Air Line Railroad Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

CHARLES T. ABELES,
Of Counsel.

March 29, 1955.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF OPPOSING MOTIONS TO AFFIRM.

Pursuant to Rule 16, paragraph 3 of the Revised Rules of this Court, the appellant files this brief in opposition to the separate motions to affirm made by (a) the United States of America and Interstate Commerce Commission, and (b) Atlantic Coast Line Railroad Company.

Preliminary Statement.

Both motions to affirm are made pursuant to Rule 16, paragraph 1(c), in which Rule it is stated that this Court will receive a motion to affirm the judgment sought to be

reviewed on appeal from a federal court, "on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument." We respectfully submit that the questions presented are not unsubstantial, but are of public interest and importance.

At the outset, however, we must point out certain statements in both motions which we believe to be incorrect or misleading, and which we cannot permit to stand unchallenged as they have a direct bearing upon the substance of the appeal. By pointing out certain statements we do not, of course, concede the accuracy of all other statements in those motions.

(a) With respect to the Coast Line's Motion.

We take immediate issue with the following statement on page 6 of the Coast Line's motion:

> "This case involves nothing more than a simple dispute between two rail carriers over the substitution of one interchange point for another interchange point on a joint through interline service which has been maintained by these carriers for many years."

That statement assumes that the Seaboard is willing to continue a route with the Coast Line for the traffic in question. That assumption is incorrect. The Seaboard is not willing to continue any route with the Coast Line for the traffic in question, once the Coast Line has exercised its abandonment authority, and it is wholly incorrect to say that the case involves nothing more than the substitution of one interchange point for another interchange point.

The Seaboard has unequivocally stated that it will not agree to any substitute interchange point for the traffic in question and that it will be perfectly satisfied if the

Coast Line closes the route through Thalmann by abandoning the line from Alma to Anguilla. The record clearly shows that the Seaboard is not interested in any substitute interchange point.

The Seaboard's amended answer before the Interstate Commerce Commission, dated March 12, 1953, contains, among others, the following allegations:

> (par. 2) "Defendant denies that any dispute has arisen on its part with respect to the point of interchange of any traffic now being interchanged between it and complainant."
>
> (par. 3) "* * * *the defendant hereby withdraws any offer or agreement on its part to substitute Bladen or any other junction or interchange point in lieu of Thalmann,* unless and until the complainant has secured further and appropriate authority for the abandonment of the above mentioned portion of the old Atlanta, Birmingham and Coast Railroad. Defendant has and will have no objection to such abandonment provided conditions are imposed for its protection and that its present through routes, and those in connection with its subsidiary, the Macon, Dublin & Savannah Railroad Company, and its general competitive situation and that of its said subsidiary, are not adversely affected." (Emphasis supplied.)

With respect to the above quoted portion of paragraph 3 of its amended answer, Seaboard's brief before the Interstate Commerce Commission, dated May 11, 1953, stated (pp. 3 and 4):

> "The Seaboard has now withdrawn even the implication in paragraph 3 of the amended answer that, under some circumstances, it might agree to an alternate interchange point in lieu of Thalmann for the traffic involved in this proceeding. If the testimony is not sufficiently clear and specific on

that point (R. 851) *the Seaboard here and now, on brief, advises the Commission that it does not agree to the substitution of Bladen or any other junction or interchange point for the traffic hereinafter described.*" (Emphasis supplied.)

In a footnote to that statement the Seaboard pointed out that it was still willing to substitute Bladen as the interchange point for the so-called Brunswick traffic, as distinguished from the south Florida traffic involved in this case, but that "* * * the position stated with respect to the traffic involved is unequivocally the Seaboard's position so long as this proceeding is pending."

At the oral argument before Division 3 of the Commission, on December 16, 1953, the Seaboard's position was clearly stated, and we quote (Tr. 935-936):

"Mr. McDonough: * * * The point I have been making, the point I have been insisting upon, is that there is no through route for this particular traffic through Jacksonville or Callahan, at the present time. *And there is an effort to open a through route, on the guise of asking for a substitute interchange point.*

We are not asking to close the present open route. * * * Now, they are closing by abandoning the line.

Comm. Knudson: That has already been authorized by the Commission. That is water over the well-known dam, is it not?

Mr. McDonough: Except that they have not abandoned it.

Your Honor, it is up to them. *If they want to close the present route through Thalmann, we are perfectly satisfied. We are not asking for any substitute interchange point at all.*" (Emphasis supplied.)

The traffic in question is traffic originated by the Seaboard or terminated on the Seaboard. It is Seaboard traffic on which the Seaboard is entitled to its long haul, absent good reason to the contrary. The traffic in question that now moves through Thalmann can move equally as well over the Seaboard's long haul routes[1], and the mere fact that the Coast Line proposes to abandon its line through Thalmann furnishes no reason, no proper excuse, nor any necessity for any substitute interchange point. No shipper will be affected or harmed if that route is closed, for the traffic that now moves through Thalmann will move through the Seaboard's long haul routes at the same rates and with the same service to and from the same origins and destinations.

We take like issue with the portion of the following statement appearing on page 4 of the Coast Line's motion which we have italicized:

> "Thalmann is located on the segment of track authorized to be abandoned and *the exercise of the abandonment authority necessitates the substitution of another interchange point* in lieu of Thalmann on the traffic interchanged at Thalmann."

In the first place, the abandonment authority has not been exercised and, in the second place, even if it should be exercised there is no necessity for any substitute interchange point. The Coast Line produced no shipper witnesses to testify they would be hurt by closing the route.

The Seaboard's evidence was positive to the contrary. The witness R. T. Etheridge, an Assistant Vice President

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[1] The reference here and throughout this brief to the Seaboard's long-haul routes is to its routes through Montgomery, Columbus and Macon-Vidalia (See the map, Appendix C to the Jurisdictional Statement). The facts that Seaboard's north and south line to Richmond runs through Hamlet, and that Seaboard has a line of railroad running southwest from Hamlet to Atlanta and Birmingham, have nothing to do with this case. The traffic involved in this case does not move through Hamlet.

of the Seaboard, testified, among other things (Tr. 848-849):

> "There have been no complaints, except in isolated and specific cases common to all lines, of the service via our longer-haul junctions, and we can continue to perform quite well without the Thalmann interchange, with more profit to the Seaboard and with no impairment of service to the public."

The Commission itself found that the Seaboard's long haul routes for its own traffic were "presumably" satisfactory (Jurisdictional Statement, p. 12, and Appendix A-7, p. 24), and the Court below found that the instant case (Jurisdictional Statement, p. 18, and Appendix A-1, p. 12), "involves no shipper complaints."

We take like exception to the following statement on page 7 of the Coast Line's motion:

> "We are here dealing with a through interline service which has been in effect between Seaboard and Coast Line for many years."

The challenged order of the Commission would establish a "through interline service" via Jacksonville, at joint rates, and this case is dealing with an order purporting to require the establishment of such service via Jacksonville. It is not correct to say that such through interline service via Jacksonville has been in effect between Seaboard and Coast Line for many years. The contrary is the truth. For the traffic in question there has never been such through interline service in effect between Seaboard and Coast Line, via Jacksonville.

The Seaboard and the Coast Line have had in effect for many years agreements specifically providing that neither line would accept the traffic in question at either Callahan or Jacksonville (except in switching service). Those agree-

ments are contained in the routing instructions issued by the two railroads which were introduced in evidence before the Commission as Exhibits Nos. 45 and 46.

Prior to the commencement of the Coast Line's abandonment proceeding the Seaboard advised the Coast Line, "that we would not consider opening a route via Jacksonville either in lieu of or in addition to the route via Thalmann." (File memorandum of Mr. G. B. Rice, Vice President of the Seaboard, dated February 28, 1948, Exhibit No. 73 (Tr. 850)). The Seaboard's position in that respect has not changed.

The facts are that under Section 15(8) of the Act the Seaboard would not have been required to accept a car for movement on a through bill of lading routed through Jacksonville, but could insist upon local billing. If the law were otherwise, the act of a shipper in tendering a through bill of lading could open up a new route through Jacksonville or anywhere he chose, and the result condemned by this Court in the *Thompson* case (*Thompson* v. *United States*, 343 U. S. 549 (June 2, 1952)) would have been reached.

There is no dispute between the two railroads over the substitution of an interchange point. The Seaboard has no interest in the continuation or substitution of an interchange point, and it has no desire to have the Coast Line continue to participate in the handling of this Seaboard traffic. The Coast Line is in the position that it cannot have both the benefits of the abandonment, and the benefits of continued participation in the handling of Seaboard traffic, unless the order of the Commission opening a new route for the latter purpose is sustained by this Court.

The Coast Line told the Commission in the abandonment proceeding that the abandonment would effect savings of $184,000 per year (Appendix A-5, pps. 8 and 16). The

Coast Line has now foregone estimated savings in excess of $750,000 in its efforts to have the benefits of continued participation in the Seaboard's south Florida traffic.

(b) With respect to the motion of the United States and the Interstate Commerce Commission.

We also take exception to the oversimplification in the following statement in the motion of the United States and the Commission, appearing on page 6 thereof:

> "Concededly, there has long been in existence a through route over the lines of appellant and the Coast Line for traffic moving between southern Florida points on appellant's line and the Atlanta and Birmingham gateways and points beyond."

That statement is misleading and inaccurate unless the words, "with interchange at Thalmann," are added.[2] There is not now and has never been in existence a "through route" via Jacksonville, or any other point of physical connection through which such traffic could be moved in conjunction with the Coast Line, except the still open route through Thalmann.

On cross-examination by counsel for the Coast Line, the Seaboard's witness Etheridge, testified (Tr. 851):

> "Q. [By Mr. Gwathmey] just one other question, then, Mr. Etheridge:

---

[2] The Court below added the necessary qualification saying (Appendix A-1, p. 8):

> "In the instant case, through transportation service between Coast Line and Seaboard has been in existence for a number of years between the points involved in the Commission's order, *via Thalmann*." (Emphasis supplied.)

but the Court below used that statement as the basis for its conclusion that the existence of a through route via Thalmann presupposed the existence of a through route via Jacksonville, which we submit is contrary to the holding of this Court in *Thompson* v. *United States*, 343 U. S. 549 (June 2, 1952).

> Is there any other route on traffic from Seaboard points, prior to their serving Jacksonville, via the Coast Line to the destination territory involved in this proceeding, by which I mean traffic moving Birmingham, Atlanta, and points beyond, is there any other route between Coast Line and Seaboard? A. I know of no other route between South Florida on the one hand and points beyond Atlanta and Birmingham on the other, [except] by Thalmann.
>
> Q. If that route is eliminated there will be no joint Seaboard-Coast Line route from this territory to the other territory? A. That is correct; * * *."

The report of the Commission (Appendix A-7) will be searched in vain for any explicit statement or finding that there is an established through route via Jacksonville for the traffic in question. If the Commission so intended to find, the finding can only be spelled out by inference, deduction, adumbration, and halting impression, which are not sufficient to support the Commission's orders, particularly in view of the direct and uncontradicted evidence to the contrary (*Secretary of Agriculture* v. *United States*, 347 U. S. 645 (June 7, 1954), and *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499 (March 4, 1935)).

At the oral argument before Division 3 of the Commission, on December 16, 1953, counsel for the Coast Line conceded that (Tr. 966) "* * * the tariffs today do not provide for this is [as] an open, active route through Jacksonville."

The following excerpts from the oral argument before Division 3 are important (Tr. 931-932):

> "Comm. Knudson: What do the published tariffs show? Do they show an open route through Jacksonville?
>
> "Mr. McDonough: For their [this] traffic, no.
>
> "Comm. Knudson: Well, what kind of traffic do they show open routes for?

"Mr. McDonough: Oh, there is much traffic interchanged at Jacksonville. But not this traffic, not this traffic from south Florida, and Atlanta and Birmingham and beyond."

* * * * * *

"Comm. Knudson: Mr. Gwathmey, you have three minutes on rebuttal. Will you kindly refer, if you find it possible to do that, to that part of the record which, in your opinion, establishes a proof of record of an existing route through Jacksonville" (Tr. 964).

* * * * * *

"Mr. Gwathmey: * * * As to the question of through routes, I think that Mr. McDonough is right in saying that the tariffs today do not provide for this is [as] an open, active route through Jacksonville.

"I do not see how they can deny, if traffic is routed through that junction, how it could be rejected.

"It would move through on combination rates, and they would have to accept it. And as he points out, there has been a number of cars which moved through there. But regardless of whether you find technically or not——

"Comm. Knudson: On combination rates, there would have to be a physical interchange of cars?

"Mr. Gwathmey: Absolutely, and you have it. You have your physical interchange and the facts of interchange, plainly" (Tr. 966).

The Court below did not even mention that argument, much less base its opinion upon it, and neither did the Commission. As pointed out above, the argument is without foundation. The important thing here is that it is an entirely different matter for the appellee and the intervenors to argue *to the Commission* that through routes exist because there is physical connection and that traffic could move on combination rates, than it is for them to

assume one of the important questions in the case by stating to this Court in their motion papers, in effect, that there has for many years been through interline service, *via Jacksonville.* That latter statement is not correct, and was not so found either by the Commission or the Court below.

The *Commission* did not find that there is an established through route via Jacksonville, even though counsel for the Coast Line so argued to the Commission. The *Court below* did not find that there was an established through route via Jacksonville, but instead reasoned that because traffic moved, say, from Winter Haven, Florida to Minneapolis, Minnesota, the existence of a route *via Thalmann* presupposed the existence of a route via Jacksonville, and that in ordering a through route at joint rates via Jacksonville the Commission was not opening a *new* through route.

The Questions are Substantial and of Public Importance.

The test adopted by the Court below for determining that a new through route was not opened is a matter of national consequence. The Court below said (Appendix A-1, p. 8):

> "It seems clear, in keeping with the definition of a through route cited in the Thompson case, *supra,* i. e., 'A continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another,' that no new 'through route' has been established. The essential features of the old through route still prevail. There has been a change only in a minor detail, namely, the substitution of Jacksonville as the interchange point in place of Thalmann."

The junction at which the traffic is to be interchanged is not a minor detail but is the vital fact to a railroad looking to protection under Sections 15(3) and (4) of the Act.

The fallacy of the test adopted by the Court below can be illustrated by a glance at the map, Appendix C to the Jurisdictional Statement. The Seaboard has a similar route for the traffic in question in conjunction with the Southern Railway Company, via Everett. If the test applied by the Court below is correct, it must follow that the Commission could order the Seaboard to interchange the same traffic with the Southern at Jacksonville, in lieu of Everett, without thereby opening a new route. All that would be involved, according to the Court below, would be a change in a minor detail!

The gross freight revenues received by the Seaboard from traffic (including the traffic in question) moving through the Montgomery, Vidalia and Columbus gateways, for the year 1952, amounted to $28,351,000 (Exhibit No. 43). For the same year, the Seaboard's freight revenues for the entire system amounted to $133,260,000 (Tr. 578). In other words, approximately 21% of the Seaboard's entire freight revenues came from the movement of traffic through those three principal gateways. The record does not contain a detailed breakdown of the revenue from the south Florida traffic in question that moved through those gateways, but it was estimated at not less than $12,000,000 per year (Tr. 579).

The record shows that the Seaboard has spent millions of dollars for equipment and roadway betterments on its long-haul routes in reliance upon the heavy and increasing volume of the traffic in question moving over those routes (Tr. 611). If the test adopted by the Court below is correct, any protection thought to be afforded by Sections 15(3) and 15(4) in illusory. The test used by the Court below, if

applied to the railroad systems of this Country, would jeopardize enormous investments made in the belief that the railroads were entitled to retain their long-haul routes, and that they could not be deprived of the same, nor be forced to open new routes at the same joint rates in direct competition with their long-haul routes, except in cases where the Commission met the requirements of Sections 15(3) and 15(4).

The Court below, as did the Commission, simply ignored the fact that the Seabord has its own long-haul routes over which its south Florida traffic moves in large volume without the intervention of the Coast Line for any part of the way. The Court below continued (Appendix A-1, pp. 8-9):

> "In essence, the requisite and vitally important components of the original through route under the new arrangement will still be intact—the holding out by the carriers involved and the actual transportation of traffic at a through rate from and to the same origin and destination points described in the Commission's order. Thus, the origin and destination, territories and the freight rates and divisions remain the same regardless of the junction at which the traffic is to be interchanged."

The opinion of the Court below concedes that the Commission's order would establish a "new point of interchange", and a "new arrangement" but it found that (Appendix A-1, p. 9), "Technically, what is involved here is not the establishment of a new 'through route' in the statutory sense." The Court below simply disregarded the fact that there has never been any "holding out" by the Seaboard and the Coast Line to transport the Seaboard's south Florida traffic at a joint or through rate *via Jacksonville*, and the Court below committed plain error in assuming that the existence of a through route via Thalmann

presupposed the existence of a through route via Jacksonville.

In stating that the divisions would remain the same the Court below apparently was confusing divisions with revenue and simply disregarded or overlooked the fact that once a new route is opened via Jacksonville no power on earth can limit the traffic that might thereafter move through Jacksonville to the small amount of traffic that heretofore moved through Thalmann.

The Court below may have been influenced by the wholly erroneous statement of the Commission (Appendix A-7, p. 26), that, "* * * there is no indication that the revenue earned when traffic moves via the other junctions is greater than would accrue to the Seaboard on the same traffic interchanged at Jacksonville." We are at a loss to understand how that statement could have been made. The testimony to the contrary was positive and uncontradicted.[3]

In 1952 a total of 75,405 cars of the traffic in question moved through the four gateways of Montgomery, Columbus, Vidalia, and Thalmann. Out of those 75,405 cars, only 1,743 moved through Thalmann while 73,662 moved through the Seaboard's longer haul gateways. The Commission's order would not close those other gateways, nor compel the traffic to move via Jacksonville, but that is beside the point.

The Commission and the Court below have attempted to do precisely what this Court said should not be done, in the case of *United States* v. *Missouri Pac. R. Co.*, 278 U. S. 269, (January 2, 1929), hereinafter for convenience referred to as the *Subiaco* case. In that case the Missouri Pacific's

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[3] Seaboard's witness J. A. Kane, Assistant General Freight Agent (Tr. 563):

> "Every car of that traffic that moves via a new route through Jacksonville or Callahan, instead of Montgomery or those other gateways, means a direct loss of revenue to the Seaboard."

existing long-haul routes were not closed, and the traffic there in question was not compelled to move over the Subiaco.

In the *Subiaco* case the traffic involved was traffic originating east of the Mississippi River and moving through Memphis, Tennessee, to Fort Smith, Arkansas, and points beyond. The order of the Commission in that case applied only to westbound traffic, but the analogy to southbound traffic in the instant case is precise. If the test of a through route was the continuous carriage of goods from a point east of the Mississippi River to Fort Smith, and points beyond, the Commission's order in the *Subiaco* case, requiring the same joint rates for traffic moving over the Subiaco, via Paris, Arkansas, in conjunction with the Missouri Pacific, would not have been the opening of a new through route.

This Court held to the contrary, and said (278 U. S. 269, at p. 276):

> "The order would compel the Missouri Pacific to use its Paris branch *to establish a route* to compete with those in which it has much longer hauls. *The new route* would give it a haul not more than the length of the Paris branch as against those over its lines from its Mississippi gateways to or beyond Fort Smith." (Emphasis supplied.)

In the instant case, on southbound traffic, the order would compel the Seaboard to use its line from Jacksonville to Baldwin to establish a route to compete with its own routes on which it has much longer hauls and greater revenue, through Montgomery, Columbus and Macon-Vidalia. There would be the same result with respect to northbound traffic. If the Court below is correct, that is all immaterial because the origin and destination territories and the freight rates would remain the same via the new short haul junction.

Neither the report of the Commission nor the opinion of the Court below adopted the argument of counsel for the Coast Line that there was already in existence a through route via Jacksonville because the traffic in question could move via Jacksonville on combination rates, and it is our view that that question is not reached in this case.

That question was reached and is involved in litigation over the Commission's decision in *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 287 I. C. C. 611 (January 12, 1953). In an action brought in the District Court of the United States for the District of Nebraska, Omaha Division, that order of the Commission was set aside in part, by a divided court, with an opinion released October 22, 1954, the dissenting judge being of the opinion the order should have been set aside *in toto*.

In another action involving the same order of the Commission, brought in the District Court of the United States for the District of Colorado, with an opinion filed January 13, 1955, a unanimous Court did not strike down any part of that order, but held that the Commission did not go far enough in the relief granted. The basis of the Colorado court's decision was that the Commission had misconstrued the *Thompson* case in holding that certain routes were not through routes and that they had been closed as such by the application of higher combination rates. If this Court should be of the view that that question is presented in this case, it is a question equally as substantial and important as the unusual test adopted by the Court below in holding that the Commission's order in the instant case did not open a new through route.

If it be argued that the Commission's exercise of its abandonment authority gave it some power it would not otherwise possess with respect to opening a new route through Jacksonville (i.e., that it had the power in con-

junction with the Coast Line, but not with the Southern, although the situations are otherwise identical for all practical purposes), a grave question of statutory construction would be presented, and, if such was found to be the case, the concomitant would be that the Seaboard was a necessary party to the abandonment proceeding, and the abandonment authority being ineffective, the assumed necessity for a substitute interchange point does not exist. Among other things, the Seaboard might have protected itself in that proceeding in a number of ways, even to the extent of requesting a condition that would have permitted it to acquire and operate the portion of the line between Thalmann and Sessoms.

We deem it unnecessary to repeat or elaborate upon the showing made in the Jurisdictional Statement of the Commission's failure to meet the requirements of either clause (a) or clause (b) of Section 15(4), and of the error of the Court below in finding that the Commission had done so.

We respectfully submit that the questions presented by this appeal are substantial and of public importance, and that the motions to affirm should be denied.

March 29, 1955.

Respectfully submitted,

James B. McDonough, Jr.,
Counsel for Plaintiff-Appellant, Seaboard Air Line Railroad Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

Charles T. Abeles,
Of Counsel.

MAY 6 1955
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 584.

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee,

INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

PETITION FOR REHEARING.

JAMES B. McDONOUGH, JR.,
Counsel for Plaintiff-Appellant, Seaboard Air Line Railroad Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

May 6, 1955.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 584.

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee,

INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

PETITION FOR REHEARING.

On Monday, April 11, 1955, a *per curiam* decision was announced by this Court, to-wit, "The motions to affirm are granted and the judgment is affirmed." This petition for rehearing is filed pursuant to paragraph 1 of Rule 58 of the Revised Rules of this Court, and is supported by certificate of counsel that it is presented in good faith and not for delay.

We respectfully submit that the Commission's order did open a new route or routes contrary to the restrictions of Section 15(4) of the Interstate Commerce Act, with extraordinary consequences. The situation is not one that is saved by the Commission's expertise.

Statement of Grounds for Rehearing.

On May 3, 1955, counsel for the appellant, after prior notice to counsel for the other parties of his intention, personally presented to the Honorable Richard F. Mitchell, Chairman, Interstate Commerce Commission, the following letter:

May 3, 1955.

Honorable RICHARD F. MITCHELL, Chairman,
Interstate Commerce Commission,
Washington 25, D. C.

Dear Sir:

This letter is to request an extension of the effective date of the Commission's order of July 30, 1954, as modified October 11, 1954, in Docket No. 30882, *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company*, commonly called the *Thalmann Interchange Case*.

Unless the requested extension is granted we believe that this Company will be deprived of an opportunity and of rights to which it is entitled as a matter of fair play and simple justice. The United States Supreme Court, on April 11, 1955, affirmed the judgment upholding the Commission's order, and we are appealing to the Commission as a matter of grace, although the time for filing a petition for rehearing with the United States Supreme Court has not expired and will not expire until May 6, 1955.

The Coast Line pointed out to the Supreme Court, with respect to the routes with the Coast Line via Thalmann that:

> "Neither party has attempted to withdraw from that service."

and

> "The route has never been cancelled and neither party has sought to cancel it."

The Seaboard is now seeking to cancel all specific routing through Thalmann, and it should have the right to be heard as to whether such cancelation is "consistent with the public interest," *an issue which has not been heard or determined by the Commission.*

The Commission found (emphasis supplied):

> "The defendant [Seaboard] is obligated, under section 3(4) of the Act, to provide reasonable and proper facilities for the interchange of traffic at an interchange point *in lieu of Thalmann,* with due regard for the public interest."

The Commission found, on the assumption that the routes through Thalmann were to be continued, that the proposed route through Jacksonville was needed. *The Commission made no finding that the routes via Thalmann were needed or necessary in the public interest. That issue was not before the Commission, nor decided by it.*

If the Seaboard can sustain the burden that the cancelation of the specific routes via Thalmann is consistent with the public interest, the Commission's order of July 30, 1954, will not operate to require the establishment of such routes via Jacksonville. If the Seaboard can cancel the routes through Thalmann, and the Coast Line still desires routes via Jacksonville, such routes can only be opened after compliance with Section 15(4) and not under the theory of mere substitution of an interchange point.

If the Commission will not suspend the operation of the order of July 30, 1954, the Seaboard will be cut off from the opportunity to cancel the routes via Thalmann, for once the order becomes effective it requires the automatic substitution of Jacksonville for Thalmann, and if the Seaboard desires to protect its long haul it will thereafter be compelled to sustain the burden of proving that the cancelation of the routes *via Jacksonville* is consistent with the public interest.

We point out another matter that lends equity to our position and present request.

For northbound traffic, the lines of the Coast Line do not reach Thalmann. For northbound traffic the lines of the

Coast Line do reach Jacksonville. The Commission's order allows the Coast Line to solicit Seaboard originated traffic at Jacksonville, which the Coast Line could not do before, for movement beyond over the Coast Line, but it does not give the Seaboard the right to solicit Coast Line originated traffic at Jacksonville for movement beyond over the Seaboard.

On southbound traffic, the rails of the Seaboard do not reach Thalmann, but on southbound traffic they do reach Jacksonville. The Commission has ordered the Seaboard to take at Jacksonville traffic from the Coast Line which would otherwise move into Jacksonville over Seaboard rails, but it has not required the Coast Line to open routes that would require the Coast Line to take at Jacksonville traffic from the Seaboard which would otherwise move into Jacksonville over Coast Line rails.

If the Seaboard can sustain the burden of cancelling the routes via Thalmann the two carriers will be on an equal footing. If the Coast Line thereafter wants to open routes through Jacksonville for Seaboard originated and terminated traffic, the Seaboard will be in a position to ask like routes through Jacksonville for Coast Line originated and terminated traffic.

The Seaboard's proposal to cancel all specific routing through Thalmann on all commodities, as submitted to the Southern Freight Association is dated April 22, 1955, and is SAL Proposal No. 11341. There are at least ten other proposals, in which the question of routing of phosphate rock via Thalmann is involved, now pending before the Southern Freight Association or this Commission, which are listed on the attached sheet marked Exhibit A.

The Commission refused to suspend the elimination of Thalmann in one of the proposals involving phosphate rock, but has suspended, at the request of the Coast Line, the tariffs that would eliminate Thalmann in another such case, and the latter case, *Investigation and Suspension Docket No. 6285,* is now set for hearing before this Commission on June 29, 1955. The basis of the Coast Line's protest was not public interest but an alleged discrimination against it in that routes with other railroads were provided via Hampton, Florida, and Savannah, Georgia.

If the Coast Line's claim of discrimination has any merit, the Seaboard may remove the basis of any such claim by canceling all routes with other connections which permit it to be short hauled, and the Seaboard should have the opportunity to protect its long-haul routes, in accordance with the spirit and intent of the Act and the National Transportation Policy.

We respectfully pray that the effective date of the Commission's order of July 30, 1954, as modified October 11, 1954, be suspended, pending the determination of the right of the Seaboard to cancel the existing specific routing in conjunction with the Coast Line via Thalmann.

In the alternative, as a minimum of relief, we ask that a new effective date be fixed. The order of July 30, 1954, as modified by the order of October 11, 1954, carried an effective date of January 15, 1955, with the usual requirement of thirty days' notice to the Commission and the general public. The enforcement of that order was enjoined during the pendency of the appeal to the Supreme Court. In any and all events we respectfully submit that an order with a new effective date, to permit the handling of the tariff changes through regular procedures and the thirty days' notice, should be entered, with an effective date not earlier than June 30, 1955.

Respectfully submitted,

/s/ JAMES B. McDONOUGH, JR.,
Assistant General Counsel.

cc The Attorney General,
United States Department of Justice,
Attention: Mr. Willard R. Memler,
Washington 25, D. C.

Mr. Edward M. Reidy,
General Counsel,
Interstate Commerce Commission,
Washington 25, D. C.

Mr. Richard B. Gwathmey,
General Solicitor,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

EXHIBIT A

Date of Proposal		Proposal
October 23, 1953		FL No. 10881
April 12, 1954	Joint	ACL No. 13460 SAL No. 10849
June 9, 1954	Joint	ACL No. 13527 SAL No. 10956
June 23, 1954	Joint	ACL No. 13584 SAL No. 10978
August 6, 1954	Joint	ACL No. 13640 SAL No. 11033
September 17, 1954	Joint	ACL No. 13698 SAL No. 11091
February 3, 1955		Frisco No. 983
February 8, 1955		Frisco No. 984
February 21, 1955	Joint	ACL No. 13903 SAL No. 11273
April 6, 1955	Joint	ACL No. 13985 SAL No. 11291

Chairman Mitchell had before him at that time the following telegram from counsel for the Coast Line:

WU 020 CAK

WILMINGTON NCAR MAY 2 1212PME

JAS B MCDONOUGH JR, ASST GEN COUNSEL

REFERRING TO LETTER DATED MAY 3 WHICH MR. MCDONOUGH OF THE SEABOARD ADVISES HE WILL SUBMIT TO YOU TOMORROW REQUESTING EXTENSION EFFECTIVE DATE COMMISSION'S ORDER JULY 30, 1954, DOCKET 30882, ATLANTIC COAST LINE RAILROAD COMPANY VERSUS SEABOARD AIR LINE RAILROAD COMPANY STOP COAST LINE STRENUOUSLY OBJECTS TO THE REQUESTED EXTENSION OR TO ANY EXTENSION OF SAID ORDER. ORIGINAL CHAIRMAN MITCHELL COPY MCDONOUGH

R B GWATHMEY

1258P

3 30 1954 30882

The letter was presented to Chairman Mitchell at 10:00 A. M. (D. S. T.) on May 3, 1955, and counsel for the appellant was asked to return at 2:30 P. M. (D. S. T.), and did so. At that time Chairman Mitchell advised counsel for the appellant that the effective date of the Commission's order would not be postponed so as to give the Seaboard the opportunity to close the routes via Thalmann, but that he would enter an order, similar to the order of October 11, 1954 (Appendix A-3 to the Jurisdictional Statement) modifying the order of July 30, 1954, so as to become effective on June 15, 1955, with the same requirements as to notice.

The Seaboard heretofore made no effort to cancel all of the through routes and joint rates with the Coast Line via Thalmann (although it has heretofore sought and is seeking to restrict the movement of phosphate rock via Thalmann) for the simple reason that if the Seaboard took the initiative in canceling those routes the burden of proof would be upon it to show that such cancelation "is consistent with the public interest"[1] while if the Coast Line canceled the routes by abandoning Thalmann that would not have been the case. Following this Court's order of April 11, 1955, however, the Seaboard is now endeavoring to cancel all specific routing via Thalmann, even though that action has put upon it a burden it should not have been required to bear.

The Commission has now refused to give the Seaboard even the opportunity to cancel the routes through Thalmann. It is no answer to say that the Seaboard could have availed itself of that opportunity over the period of several years these proceedings have been pending before the Commission. Is the Seaboard to be held to have taken at its peril the position that the Commission was without power to open new routes via Jacksonville, and that if it lost that contention it automatically lost every other right it had to protect its long-haul routes, not only against the Coast Line but also against the Southern?

We urgently pray the Court consider the overall effect of the Commission's order. Upon the Commission's order

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[1] 49 U. S. C. Sec. 15(3); "If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, *the burden of proof shall be upon the carrier or carriers proposing such cancelation* to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section." (Emphasis supplied.)

becoming effective, giving the Coast Line routes through Jacksonville, in addition to everything else, the Seaboard will automatically be guilty of a discrimination against the Southern, unless it gives the Southern similar routes through Jacksonville.

The Seaboard will then be compelled to give both the Coast Line and the Southern routes through Jacksonville, in lieu of both Thalmann and Everett, for this Seaboard originated and terminated traffic, on which the Seaboard had heretofore thought it was entitled to protect its long-haul.

There is nothing fanciful about that statement, as we consider it will be the inevitable result, and we respectfully request the Court to reexamine the map attached as Appendix C to the Jurisdictional Statement. Under the view of the law expressed by the District Court in this case, a route in conjunction with the Southern via Jacksonville in lieu of Everett will not be a new route, and the Seaboard's rails, for the traffic involved, might as well end at Jacksonville.

There is nothing fanciful about the foregoing statement. There was attached to the petition to the Commission for reconsideration and other relief, dated February 12, 1954, a list of the Seaboard stations in Florida, totaling three-hundred and seven in number, to and from which the Coast Line contends the Commission's order will require the Seaboard to open routes with the Coast Line via Jacksonville. The same stations would have to be made open to routes with the Southern via Jacksonville.

The Coast Line sought the abandonment authority. The Coast Line initiated the series of events that produced the present situation. The Seaboard may not have taken the most adroit measures to protect itself, but we submit that the Coast Line could not prove either discrimination against it, or public interest, or circuity, entitling it to routes on

this traffic *via Jacksonville,* and that it was plain error for the Court below to find that the Commission's order did not establish new through routes, or, if it did, that the requirements of Section 15(4) had been met.

Possible annual losses of millions of dollars of Seaboard revenue, resulting from an abandonment proceeding which it did not initiate and to which it was not even a party, may not be a matter of public importance, but we believe that the abandonment proceeding led to an erroneous construction of Section 15(4) which is a matter of public importance. It seems obvious that no relief can be secured in further proceedings before the Commission, and that the only hope of relief lies in full consideration by this Court.

We respectfully submit that the Court below was in error in denying the relief sought and in dismissing the complaint.

We respectfully pray that this Court request replies to this petition for rehearing and that, upon rehearing, it vacate its order of April 11, 1955, and note probable jurisdiction.

May 6, 1955.

Respectfully submitted,

James B. McDonough, Jr.,
Counsel for Plaintiff-Appellant, Seaboard Air Line Railroad Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

JAMES B. MCDONOUGH, JR.,
Counsel for Plaintiff-Appellant

No. 584. SEABOARD AIR LINE RAILROAD CO. *v.* UNITED STATES ET AL. Appeal from the United States District Court for the Eastern District of Virginia. *Per Curiam:* The motions to affirm are granted and the judgment is affirmed. *James B. McDonough, Jr.* and *Charles T. Abeles* for appellant. *Solicitor General Sobeloff, Charles H. Weston* and *Edward M. Reidy* for the United States and the Interstate Commerce Commission; and *R. B. Gwathmey* for the Atlantic Coast Line Railroad Co., appellees. Reported below: 131 F. Supp. 129.